

**Milton Town Council Workshop  
Milton Library, 121 Union Street  
Monday, March 23, 2015, 6:30pm**

**Minutes are not Verbatim  
Transcriptionist: Helene Rodgville**

1. Call to Order – Mayor Jones
2. Moment of Silence
3. Pledge of Allegiance to the Flag
4. Roll Call – Mayor Jones

Councilman Garde	Present
Councilwoman Patterson	Present
Councilman Coté	Present
Councilwoman Parker-Selby	Present
Councilman Kost	Present
Mayor Jones	Present
Councilman West	Absent

5. Public Participation

Mayor Jones: In reference to public participation, Council what is your pleasure? Last time we did take comment through the process, recognizing folks in the audience. We certainly can take public participation comments at this time, on anything that doesn't have to do with Charter. What would be your choice?

Councilman Garde: My choice would be to have the citizens who are interested in the Charter, comment on it as we go; as the subjects come up, have them comment. But I'm amenable to something else that any of the Council person's have a different idea.

Councilwoman Parker-Selby: That sounds good to me. I like that idea.

Kristy Rogers: I have a sheet from Mr. Dailey, but it may just be a hold.

Mayor Jones: Okay.

Jeff Dailey, 211 Grist Mill Drive: Council, I had a comment from a neighbor and basically it boiled down to what's the rush in reference to the Charter rewrites and while everything is a process and has to run it's course, it seems as though this week what do we have, two or three meetings on this very topic and people who want to participate may not be available, just bam, bam, bam like that. I guess what I'm asking is what is the context? What is the timetable, and that emanates from the Comprehensive Plan, which had a couple of years to run it's course and now, mercifully, they've been blessed with additional time and there's talk of bringing in a bona fide Planner to review what's going to be written, etc. and I'm just wondering if given the timetable or knowing when this process is going to come to a close, are we going to have any kind of review that might offer a greater degree of objectivity from someone outside or are we going to look at other town charter's? I'm just curious. What's the process and it seems as though we're kind of propelling this? Is there a need to and if there is, as a citizen, I would very much like to know? Okay?

Mayor Jones: Mr. Thompson, will you speak to process on the review?

Seth Thompson: Certainly. A lot of the time table is arranged around the legislative session,

because they end June 30<sup>th</sup> into July 1<sup>st</sup> and then take a six-month hiatus. So this is the first year of their two-year cycle, so it would be possible that if the Charter wasn't passed by both houses, by the end of June 30<sup>th</sup>, you wouldn't have to restart the process next year in the legislative session; but you do sit around and wait for those six months. As far as the need, basically there are a number of smaller items that seemingly have built up, I would say. So, for instance, you have your tax issue, you have the language in terms of your transfer tax, you just have a number of issues that I think if they were individual and not kind of collective, you might just do a Resolution asking for a Charter change for that limited topic. But you haven't had your Charter changed at all since I think 2008, which is a fairly long period of time and it's been even longer still since you got a full what we would call a reincorporation. So it is fairly routine that these things occur, just because the law evolves over time. That's from the legal standpoint, that's really my view. I don't know that it's been rushed, in the sense that there was a committee that handled it; obviously the Council's trying to be diligent in going through it, but there is that June 30<sup>th</sup> deadline and the way the process works, once it's introduced at the legislature, it then is assigned to a committee. It has to be voted out of committee and then be voted out on the floor of that House, so if it starts with Representative Smyk, he has to bring it up and he's in the minority caucus; although they don't normally hold up Charters; that's not something that's used for political purposes; but it just kind of takes some time and then as you get closer towards the end of session, there's a must list and very often town charter's don't make the must list. Things that apply to a larger swath of the state. That's really my view from the procedural standpoint.

Jeff Dailey: If I can address your comments. I'm well aware of that from the last go round and it all makes sense, so I guess my next question is, what's the optimal for our town? What are we hoping for? When do we want to submit it again, given the legislative schedule, etc. and how quickly would we like them to act? Do we want to be here a year from now with a brand new Charter? Is that conceivable?

Seth Thompson: Do we want to here?

Jeff Dailey: Yes, do we want to be on this date March 23<sup>rd</sup>, with a brand new Charter that was passed some months back, a year from now?

Seth Thompson: If it goes through your Council and they approve it by Resolution, the draft, to go up and be introduced as a Bill, if it's going to get done this year, it's going to be before June 30<sup>th</sup>. I don't know if I fully understood your question.

Jeff Dailey: If it gets submitted and it doesn't come forward, are we like the Comprehensive Plan? Do we have extra time? Can we address it and resubmit it? Or would it be good just to leave it sit as is and go through the process again, six months later?

Seth Thompson: There is an Amendment process for a Bill, so if the Charter's introduced and lo and behold something was missed, which does happen and you know you could have 1,000 sets of eyes look at something and there's going to be a missed comma; so there is an amendment process for the Bill. I think part of it is, because your Council Member's are constantly changing, on some level it's helpful to get some degree of finality; something that might have seemed like a good idea to one person, it becomes potentially difficult if let's say somebody else had a different idea and a particular change passed on a 4-3 vote; well you have an election and we're into the next legislative year and maybe that new Council Member has a different view on that. At that point, where are we?

Jeff Dailey: Sure. That makes perfect sense. Thank you.

Councilman Garde: I would like to add one comment to the sense of urgency. There is one area

that needs to be amended promptly and we're trying to get the whole Charter amended at the same time, but the piece that needs to be amended promptly is one section where we are limited in the amount of money we are allowed to raise by real estate taxes and we need to lift that burden from ourselves, or change it to something else in the nearest future that we can manage. So the objective has been, at least from... I'm speaking now both as a member of the Charter and Ordinance Committee and as a member of Town Council. As one human being, I would like to see this process go as fast as the Council can go, because it needs Council's full approval and vetting and understanding of what the issues are, but if we don't get that one piece amended, we may have to go with a Resolution to amend that; but the objective of the original Committee was to get the whole Charter rewritten at once and there is a sense of urgency about one particular sentence, if you will. It's a very big burden. To be specific, it limits us to raising \$1 million per year in real estate taxes and we are very close to that right now and if we continue to grow by next year, we will exceed that, so we need to do something to get that particular piece changed.

Seth Thompson: To piggy back on that too, that seems to be the immediate impetus and you could, certainly, pass a Resolution asking for that particular section to be changed and send that up to your Senator and your Representative. The problem is that all these other things, you don't want to continually ask for them to run a bill and they are relatively apolitical, but sometimes your Representatives just have other things on their plate.

Jeff Dailey: And I was here for the workshop the other night. Oh my goodness, a thousand eyes looking at any number of things and one part influences the next, so that makes perfect sense. I thank you very, very much.

6. Additions or Corrections to the Agenda

Mayor Jones: Council, any additions or corrections to the agenda this evening?

7. Agenda Approval

Councilman Garde: I make a motion to accept the agenda as written.

Councilwoman Patterson: Second.

Mayor Jones: All in favor say aye. Opposed. Motion carried.

8. Workshop style discussion regarding proposed amendments to the Town Charter

Mayor Jones: We're going to begin our workshop style discussion. If you have something to say on the Section that we are discussing, please come to the microphone and wait to be recognized. We will do so in an orderly manner. I think for productivity purposes, Council would like to set a target time for around 9:00 to wrap things up, perhaps our last bit of discussion would be helpful, so if you do have something that you want to say in reference to the Section we are discussing, please keep it brief and keep it in the three minute terms that we use during regular Council Meetings. We're starting on Section 8, Organization and Annual Meeting of Council.

Seth Thompson: That's page 19 if you're working off the same draft as me. You see the Annual Meeting was capitalized. You see the Town was added before Council and since there are elections where multiple Council Members are elected, you can see that Member has been made plural. Any questions on page 19?

Councilman Garde: I have a comment, which is the very last word on the printed page says "Town"; but it's "all appointments shall be confirmed by a majority vote of all members of the

Town Council.” Now, although the Mayor is making the appointments, should that be... this is a question, should that be a majority vote of Mayor and Town Council, or should we recuse the Mayor from voting because he/she shall have made the appointments?

Seth Thompson: It's funny, because I always thought of this as being somewhat similar to the way we deal with Judges, on the State level, where the Governor makes the appointment and then the Senate confirms; they have a little bit of a separation and that's why the Mayor wouldn't vote. Now I recognize, of course, the Governor is not a legislator. He's an Executive Branch member, but I viewed it in that fashion, that the Mayor wouldn't vote on it because the Mayor was making the appointment.

Councilman Garde: Okay. I would just say that in a few other areas where the Mayor, I think the term is makes appointments, but such as to Ad Hoc Committees and to non-standing Committees and not the Vice Mayor, Secretary and Treasurer; but we say approval of the majority of Mayor and Town Council in other places.

Seth Thompson: I'm trying to think how that would play out in practicality. So, the Mayor could end up being the tie breaker basically.

Councilman Garde: But especially with a seven member... If only the Council Members vote, you could easily get a three/three, which I guess is a rejection.

Seth Thompson: It is. It's not an approval, therefore it's a rejection.

Councilman Garde: But if the Mayor had voted, so it is significant at least to me in terms of preparing this and I think we should get it right and I rely on either other members of the Council, or Parliamentarian to...

Seth Thompson: I'm going to skip ahead and see if I can compare it to...

Councilman Garde: I was appointed to the Water Committee. When I was appointed to the Water Committee, as I understood it, the Mayor and Town Council all voted. It so happened there were no negative votes as there usually aren't when somebody volunteers, but this is more significant. This is to get Vice Mayor, Secretary and Treasurer.

Seth Thompson: It uses a slightly different phraseology where it's talking about people. Committees and appointments being made by the Mayor with the advise and consent of a majority of the Town Council, as opposed to the appointment and confirmation. In reality, I don't know that there's really a difference there.

Councilman Garde: Okay. In which case to the whole Council, maybe we should just leave it as is and say it's a majority vote of the Town Council to approve. What this is about, you can read it, it's approving the appointment of the Vice Mayor, Secretary and Treasurer. Then the assistant Vice Mayor, the assistant Secretary and the assistant Treasurer, so they are important appointments.

Seth Thompson: The net affect is that the Mayor just isn't the tiebreaker in those appointments, right?

Councilman Garde: Right.

Seth Thompson: This isn't a bad ting.

Councilman Garde: The way it's written the Mayor does not get a vote. Only the Town Council members get a vote and all the other areas we have included the Mayor as a voting member of Town Council, as the Chair.

Mayor Jones: Are you all okay for seeing this?

Councilman Garde: We're not going to vote on anything like this, because we didn't post votes, but I don't hear anybody saying it, so I think maybe we just leave it the way it is, as all members

of the Town Council and we'll leave the Mayor as the voter in this case, the way it's written.

Councilman Coté: Well does the next sentence have any affect on that?

Mayor Jones: That's interesting.

Councilman Coté: The Mayor shall be the Chairman of the Town Council. Then that makes the Mayor part of.

Mayor Jones: Eligible to vote.

Seth Thompson: Well certainly the Mayor is the Chairman of Town Council, in the sense that the Mayor is running the meetings, but I would say the more specific language overrides the more general here, so you have this general language, well the Mayor's the Chairman, so you initially have the assumption that, therefore she's going to vote on everything; except for here, you have very specific language talking about well for these particular appointments, she makes the appointment, but the confirmation is by the rest of the Town Council without the Mayor.

Seth Thompson: Page 20, Section 9. Again we have that and you folks probably recall the last time we talked about bringing some uniformity where it says the Mayor and Town Council; hopefully throughout at this point and one of the universal changes was Town Clerk or Town Manager to Town Administrator and I know there's going to be some discussion on that. I think perhaps we do that when we get to that Section, which I think is 15.14, so we're coming up on it fairly soon. The one item that's come up in the past, under Section 9, so your Charter sets your monthly meeting as the first Monday of the month, unless it's a legal holiday, or unless the Council deems that they are unable to meet, in which case it's automatically the next Monday. I don't know if the Council wanted to change that, where you had the ability to do some other date or that's just okay, that's been working. It was just a thought. So it's automatic now. If the Fourth of July is Monday, you are going to meet seven days later.

Councilwoman Parker-Selby: Well I kind of looked at that as well, because when Easter comes, sometimes it's March and sometimes it's April and April this year, the first Monday of the month is the time I'm still going on my school schedule and many people do take vacations, families and so forth, during that week when the children are out, so I kind of would like to see it where we could change the Monday.

Seth Thompson: So the question is whether you want the ability to change the initial Monday or the automatic second Monday?

Councilwoman Parker-Selby: To have the automatic second Monday, is that what you're saying?

Seth Thompson: Right. So currently it's automatically going to be on the second Monday if the first Monday is...

Councilwoman Parker-Selby: If it's not during a holiday. This particular month, this year, will be right on the holiday week. You know what I'm saying?

Seth Thompson: Yes, the way the language works though, since Easter Sunday is the holiday, it wouldn't affect...

Councilwoman Parker-Selby: A Federal Holiday would be different.

Mayor Jones: Is the point the Solicitor is making here is should the language read that the only other date for that Town Council Meeting shall be the following Monday or can it be a choice of another day?

Seth Thompson: Exactly and if you are happy... It could be that the public says we know that it's going to be on the first Monday and if that's the Fourth of July, it's going to be the second Monday. There's something to be said for that. I think some of this language stems from before



FOIA, where people expected to show up on a given day and have their meeting. Now, obviously, there's going to be seven days notice. At the same time, there might be some remnant of that expectation, but I'm going to keep my Monday's clear, because that's when the Council is supposed to meet. It was just a thought. The one other thing that I want to point out in this section and this blends in with what we were just talking about with FOIA; your Charter uses the term Special Meeting and it seems to use that term to say your non-regular meeting.

Although at one point it does say that you can have a second regular meeting; so I'm not quite sure. The one thing that's important to understand about it is Special Meeting, under FOIA, means your meeting for some reason in less than seven days notice, but it's because you have to. I know that that's caused confusion in the past. If we post an agenda that says Special Meeting, it's really not referring to this in your Charter; it's referring to the Freedom of Information Act that the meeting had to occur with less than seven days' notice due to some quasi emergency.

Mayor Jones: Does Special Meeting show up in a definition anywhere, because we've talked about definitions already? This says it is called by the Secretary, upon a written request of the Mayor, so I think it would be helpful, not only to myself, but to others here that if we can make some specification about what classifies as a Special Meeting, as opposed to the accepted second Town Council Meeting, which is what we've been doing, that would be helpful. What does qualify?

Councilman Garde: My only comment on that is that in terms of the definition, the attempt, if you will, that this document makes as the definition, is the third sentence that says "Special Meetings shall be called by the Secretary, stating the hour, the date, the place and Special Meeting Requested and the subject(s) proposed, to be considered." That's the definition. It says that you have to have subject(s) proposed and that constitutes what is a Special Meeting. Now I think we have actually been having additional regular meetings, is what I think we have been having since I've been a member of the Council; we've had two meetings per month and after having read this, since I'd never saw a written request from the Mayor and I never saw the Secretary posting it, I'm assuming that what we've been having is second regular meetings, which we're also allowed to have if it's up on the Board; it's down near the bottom it tells us that a second regular meeting may be held and my only comment on that one is I think it should... my comment is, that the penultimate word in that paragraph should be a regular. In other words, it should say "A second regular meeting of the Town Council may be held in the same month, scheduled on an as needed basis and notification procedures shall be the same as for a regular meeting"; without going through a written notice from the Mayor to the Secretary and the Secretary posting all this stuff, so my suggestion is you change special to regular. And in addition, I propose to take out the words "written" request up above on the Special Meetings, so that the Mayor can make an oral request and the Secretary may probably designate the Town Administrator to take care of it.

Mayor Jones: I appreciate all of that information, but I must say that what you consider to be the definition of a Special Meeting was not helpful to me.

Seth Thompson: I think really this is kind of a prime example of language that probably predated the Freedom of Information Act. Again, going on that concept of well I live in Milton and their meeting is the first Monday of every month and if they're going to have a Special Meeting, then the way that that's going to happen is the Mayor is going to get in touch with the Secretary, in writing, and then there's going to be this process where they have to post when it's going to be and where it's going to be; which of course you do under the Freedom of Information Act

now, so that historical context helps. I think that's really what's going on in this section. It stems from before Freedom of Information Act where you had to tell people when you were going to meet and where you were going to meet and what you were going to talk about at least seven days in advance.

Mayor Jones: Well, historically or otherwise, is tonight not a Special Meeting?

Unidentified Speaker: It's a workshop.

Mayor Jones: Okay, it's a workshop, so now we have another definition. Okay? See what I'm saying and I have not, in my term, contacted Councilwoman Patterson to request any meetings, special or otherwise; so I'm not saying it won't happen, but everything at this point has been filtered through Mrs. Rogers. Is this necessary?

Councilman Kost: In the very first sentence where it says the Mayor and Town Council shall hold at least one meeting, change the word "least" to "regular"; shall hold a regular meeting on the first of the month. That becomes our regular meeting and everything else becomes something else.

Councilwoman Patterson: What do you call the second meeting that we take advantage of on the third Thursday?

Mayor Jones: Second regular meeting.

Councilwoman Patterson: That would be the second meeting?

Councilman Garde: I have an alternative suggestion. Okay? Suppose we delete from the middle of this thing that says "Special Meetings shall be called", since we've never had a Special Meeting called by the Secretary upon written request; why not delete the entire thing and in fact, change this to Town Council Meetings, up at the top, instead of Regular and Special, make it Town Council meetings; eliminate all comments about Special Meetings and say first Monday of the month, or the second, and a second regular meeting can be held in the same month as scheduled on an as needed basis? And just eliminate the definition of Special Meeting. The only other place that I know of that it's used, does involve the budget, because the only other place where Special Meetings are used, as far as I know, is in compensation at half the rate for Town Council Members and since that is the case, I would suggest that when we get there, we just make half for the second regular meeting or any additional regular meetings, instead of Special Meetings. The only other place where I believe the term Special Meeting is used though, is in compensation for Mayor and the members of the Town Council.

Mayor Jones: And that may remedy the thing, but now I'm stuck on a definition for Workshop.

Councilwoman Patterson: I was just going to say, what do you do for Workshop?

Mayor Jones: Because it's going to come under meetings, unless it's addressed someplace else?

Councilwoman Patterson: Will Workshop take the place of the Special Meeting? Have we ever had a Special Meeting?

Councilman Kost: Why do we need to call it a Workshop?

Councilman Garde: Why do we need to label all of these meetings?

Councilwoman Patterson: It's called a Workshop.

Councilman Garde: We're allowed... The Town Council has substantial powers under Clause 29. One of them can be to call a Workshop. My suggestion is you put it someplace else; not in here. Let's not be defining Workshops.

Seth Thompson: So from my perspective and you aren't the only municipality that contemplates Workshops. That's not a defined term in any Charter that I've seen. It's not a defined term under Freedom of Information Act. What that signifies to people is, it's going to really role up your

sleeves and get through something. So I almost feel like it's a style of meeting, as opposed to anything above and beyond that.

Mayor Jones: I agree. To me it usually doesn't take a vote.

Seth Thompson: My other municipality does that exact same thing. They have a Workshop and they almost never take a vote at that Workshop, because it's their second meeting of the month, but they gear up for their regular meeting for the next month, at their Workshop.

Mayor Jones: Let's see if Mr. Crawford can add something to this.

Steve Crawford, 216 Ridge: Let me make my first comment. Just for clarification, consider this. You talk about the first Monday of the month and then we say the following Monday of the month; how about we make it the "second Monday" of the month, since we're referring to the first vs. the second. Just a consideration. Now a comment about what you're just suggesting here. I agree. I think you have regular meetings and then within the context of a regular meeting, the agenda is a Workshop. So then you don't have to define a Workshop. That's part of your regular meeting. That would be my opinion, for what it's worth. Thank you.

Councilman Coté: Mr. Thompson, you said something that Freedom of Information Act actually does refer to something called the "Special Meeting".

Seth Thompson: It does, which is why I don't like it's use here, because I think it confuses people.

Councilman Coté: Well, we should either do what Sam said and take that section out about Special Meetings, but do we need to address Special Meetings under Freedom of Information Act?

Seth Thompson: They are addressed in the sense that you have to comply with Freedom of Information Act, so when you notice a special meeting, it's going to say special across the top and normally there's some asterisk (\*) and at the bottom it says seven days notice could not be provided for this meeting because of X (exigent circumstances), or some explanation. My thought process and I think this goes along with what Councilman Garde was saying. So potentially, fine, the monthly meeting shall be held on the second Monday of the month and then eliminate down to the last sentence and say "Additional regular meetings of the Town Council may be held in the same month, scheduled on an as needed basis and notification procedures shall be the same as those for a regular meeting."

Mayor Jones: I got additional.

Seth Thompson: And I said "additional" because a very little reading of a second regular meeting, means you can only have one other one.

Councilman Garde: You can only have two.

Councilwoman Patterson: Yes.

Councilman Coté: Right.

Councilman Garde: So let's just say additional regular meetings; put an "s" in.

Mayor Jones: And strike everything from "Special Meetings to additional".

Seth Thompson: And again Freedom of Information Act is going to continue to apply, so you're going to have your seven days' notice; if you have the need for a Special Meeting, where it's less than seven days' notice, you still have to post it and all of that, but that also eliminates all of this discussion in terms of... I think it's really vestigial language... it might be from before you had a Town Clerk, where the Secretary and the Mayor were much more active in terms of handling the day to day affairs of the town. You're supposed to be depositing things in the town mailboxes.



Councilman Garde: And what we're deleting is very prescriptive and since we're not doing it, it's probably better to delete it.

Councilman Coté: I'm good with that.

Mayor Jones: Oh, I'm sorry.

Jeff Dailey, 211 Grist Mill Drive: Because you have the regular meeting on the first Monday, unless it's postponed to the second Monday (thank you Mr. Crawford), you might want to consider... and because you might have a third and possibly even a fourth regular meeting in a month's time, you might just want to refer to them as "subsequent meetings". They're regular by definition because you by FOIA have to give X amount of days' notice and you've been consistent in your agenda format, whether it's a Workshop or other; so I think you could just say subsequent meetings and then only one time would it appear as a regular meeting. Just a suggestion.

Mayor Jones: Thank you.

Seth Thompson: That's fine. Instead of additional regular meetings, it could be subsequent meetings of the Town Council?

Councilman Kost: Just additional meetings.

Councilwoman Patterson: Just additional meetings, not additional regular meetings, right?

Councilman Garde: For what it's worth, I'd prefer the terminology "Additional regular meetings of the Town Council may be held in the same month"; since we've somewhat defined regular meeting blah, blah, blah. But it's a very small preference. Subsequent meetings is fine too. Subsequent meetings. Subsequent regular meetings.

Seth Thompson: I think subsequent meetings or additional meetings leaves the door open to make sure that there isn't some technical argument that you can only have regular meetings under FOIA, as opposed to "Special Meetings" under FOIA.

Councilman Garde: Okay, so which do you prefer Counselor?

Seth Thompson: Well, if it's subsequent, you lose the ability to have a meeting before your first regular meeting. I think that's the only difference right?

Councilman Garde: Okay. Correct. Yes. So "additional" you could have on the Saturday before the first Monday?

Mayor Jones: Don't start anything, Sam.

Councilman Garde: When you're picking out of the pepper.

Mayor Jones: Additional.

Councilman Garde: Additional. Okay.

Mayor Jones: So will this apply to be striking "special" and putting "additional" meeting? Is that correct; on the second sentence for each additional meeting attended and then it will be the same under Council; additional meeting?

Councilman Garde: Additional. Yes. I'm pretty that's what we're doing, too.

Seth Thompson: I think that's been the practice, because it seems like that's the intent of the...

Councilman Garde: So changing special to additional, in two places.

Seth Thompson: Okay, on to page 21. Does anybody have any issue with the remainder of Section 9? We didn't make any changes there. Hearing none, Section 10, we have Quorum. Any issues there?

Mayor Jones: I think I saw something. Go slow.

Seth Thompson: I guess we need to change "special" there. Oh and this actually brings this back to the title.

Councilman Garde: Any regular or additional?

Mayor Jones: Does that become additional?

Councilman Garde: Yes. Additional.

Seth Thompson: My thought process actually stems from the title in Section 9. Why can't we just call Section 9 Meetings?

Councilman Garde: Well that's what I said. It should just say Town Council Meetings.

Councilwoman Parker-Selby: Or Meetings. I like Meetings.

Councilman Garde: Just plain Meetings. That's fine.

Seth Thompson: I think just plain Meetings. That works and I think we can do the same in Section 10, right? Shall constitute a Quorum at any meeting; so we don't need to...

Councilman Garde: That's better. Yes.

Seth Thompson: Great. Section 11...

Mayor Jones: I'm on 10. Quorum. Third sentence, "The Mayor and Town Council may compel the attendance of absent members in such manner and under such penalties, as may be prescribed by Ordinance." What Ordinance and what can compel? And I ask that question because I received an email back in February from Barry Goodinson, asking whether it was possible for the Town Council to consider some rules regarding the maximum number of absences allowed to Town Council and/or Committee Members. So I wanted to bring that to your attention at this point and also, my question is, is there anything that allows the Mayor and Town Council to compel the attendance of absent members? Is it contained someplace else that I have not read?

Councilman Garde: If you're looking at me, I don't know.

Mayor Jones: I'm looking at anybody who's been working on the Charter Review. I couldn't find it.

Councilman Garde: The Charter and Ordinance Committee was originally formed to try to look at differences between the Charter and any Ordinance and make sure that the Charter superseded, but the Charter and Ordinance Committees Charter, if you will, got changed from get rid of discrepancies between the two to make a recommendation with respect to improvements in the Town Charter. John, am I correct or incorrect?

John Collier: Well currently there is no ordinance that I'm aware of that allows for that procedure, therefore the word "may".

Seth Thompson: Right. This is enabling language, so if the Council wanted to do this, you could draft an Ordinance and adopt an Ordinance that says this is how we are going to compel absent members to come in. It just doesn't sound like the Council has ever made that decision. This isn't self-fulfilling language. You have to pass that Ordinance, right? So it says you don't have to do this, but if you're going to compel the attendance of these absent members, then you have to do it via Ordinance.

Mayor Jones: Alright, well then maybe this is the time to talk about that. I know it wouldn't go into the Charter; not to delay this evening's discussion, but that is an issue; maybe I'll just have to bring that up as a topic of an agenda item. But there's where it would sit, if we had an Ordinance and whether or not the Council would want to even consider one. He does talk about Boards of Directors have rules that allow for a maximum number of absences each year. If a member is unable to honor their commitment to the Board, through regular participation, their membership is terminated.

Seth Thompson: That does happen in certain states statutes. I think it's important to remember

that Section 10 is only dealing with council members. At least not to my knowledge, even despite the amount of time you have been putting in, I don't think you ever have an issue where people don't show up. I understand if his point is about Boards and that sort of thing, I think we're going to get into a Section...

Mayor Jones: It was both.

Seth Thompson: Okay.

Mayor Jones: That's why I bring it up in this Section, whether or not Council felt the need.

Councilwoman Parker-Selby: I'd like to speak to that also. There have been times I haven't been able to come here, but I haven't had an excessive absences and in organizations when you're volunteering and so forth, I know now they will write excused or unexcused; but most of the time when someone is absent, in these types of Boards that I've been on, like this one, you contact someone in the office and usually it's some really legitimate reason why you're absent; a family member illness, which I've had to deal with on occasion here; some meeting the preceded a Special Meeting, as we've discussed, or something that has interrupted it. There are occasions when people on this Council and any other Council, have to be out for some reason. Now, if someone is excessively absent then I, too, would have a problem with notifying that individual, personally, and say this is what it says. When you start giving volunteers stipulations about you're not... when you're paying them, it's a different story; but when you're telling a volunteer who's coming, that's a different story. I don't know how technical we want to get with that.

Mayor Jones: On the Committee level is what you're meaning, on that volunteer level. Okay.

Councilwoman Parker-Selby: We're elected and you've got to show you're going to be there, unless it has been a problem.

Mayor Jones: I bring it to your attention because it was brought to my attention.

Councilwoman Parker-Selby: Right. Has this been a problem here? I ask that question, in the past maybe. I don't know.

Seth Thompson: In my five years, I don't think we've had a single Council Meeting that was canceled because you didn't get a quorum.

Councilwoman Parker-Selby: Usually when a quorum isn't there, that's when people start saying now wait a minute. Thank you.

Mayor Jones: Mr. Dailey.

Jeff Dailey: The Quorum obviously rules, but what I'm bringing up may be a parking lot issue; because it may come up elsewhere. I need your help because I'm really fuzzy on this, but there was a time when everyone in the room was surprised because basically two or three people were the only ones who could vote on a given issue. There was a quorum. There were people who had to recuse themselves and we only had like two people and because of the way our Charter was written, it was pointed out at the time, those two people could vote and their vote would stand. Mike, do you remember? I don't know what it was in reference to, but it happened within the last twelve months and it was kind of like wow.

Seth Thompson: It might have been a Cannery Village issue.

Councilwoman Patterson: Propane tanks.

Jeff Dailey: Propane tanks, is that what it was?

Seth Thompson: Yes.

Councilman Coté: It might have been the budget. We only had...

Jeff Dailey: Yes. Yes. Yes. I remember.

Councilman Coté: It's not that people recused from the budget, but there were only four people here, so three could pass the budget.

Jeff Dailey: Right. I just put it out there, thinking back on the last twelve months, something we learned and we don't want to let it slip through the cracks if we can avoid that.

Mayor Jones: Right.

Jeff Dailey: Thank you.

Seth Thompson: It's an interesting debate. The way it's set up is if you have a quorum, you have a meeting and then it's the majority of the voting members then carry the day, which it is entirely possible to then have three people voting and a 2-1 vote carries the day. I understand that that can offend people. Wait a second, two people can bind the town; but then if you do it the other way, where you require a majority of the Mayor and Town Council for every vote; you create a situation where people can essentially defeat a vote by not showing up; so that's the difficulty. If you require four yeas to pass anything, that's the hard part. What if you only have four people there? Then that one person has a lot more power.

Jeff Dailey: This is just fodder, okay, I'm throwing out there, but it seems to me that with the few people passing something... I don't have it. I apologize. If I think of it, I'll bring it back.

Mayor Jones: Sit close, it will come back to you in a moment.

Seth Thompson: Okay, any other questions on 10? If not, we'll go to 11. In 11, Journal has been changed to Minutes, which makes more sense these days. There is a strikethrough in terms of the Mayor's discretion to suspend Robert's Rules of Order. I would note that there's a very important word and I know it has come up in the past, in that very first sentence. It says "The Council shall generally follow Robert's Rules of Order"; number one I think it's very important to have organization, but on the other end of that, given the fact that this then goes and applies to your Boards and your Commission's, I wonder if being too procedurally technical is a good thing; in the sense that you could see here, that it contemplates me being at all of your Boards and Commissions. Seemingly, that's going to include your Committees and all of that and there's a cost to that. I just raise it as an issue. Maybe it's something to think about. So the word "generally"... It's funny too, because the way it's structured, the word "generally" appears for the Council; but then it says shall prevail for your Boards and Commissions, so there isn't that degree of latitude that's granted to your Boards and Commissions.

Councilman Garde: I suggest that we should give it to them and I think it should say furthermore Robert's Rules of Order shall generally be followed at meetings of Milton's Town Boards. Use the same terminology. Shall generally be followed during. But since you are invited to all of them, we're assuming that you have designated the Chairman of any of those Committees as your Parliamentarian.

Seth Thompson: That's right. I think Mr. Mazzeo had a little cheat sheet for his Robert's Rules of Order, if I'm not mistaken.

Mayor Jones: I have to say on the other hand, I find "generally" gives some wiggle room that could get folks in an awful lot of trouble, but I just wanted to voice that as my opinion. Go ahead Mr. Thompson and then I'll call on you, just one second.

Seth Thompson: Again, I view it as certainly rules are important, however, it's often the intent of the rule and keeping order, that's more important. I wouldn't want to see the Town get into a situation where there's a Committee that votes and maybe the didn't follow some very technical element of Robert's Rules of Order, and Robert's Rules of Order, it's important too, that those rules are designed more for a day-to-day legislature; a body that meets on a more frequent basis

than you and also your Committees. Those are the two sides to the coin that I see.

Mayor Jones: Okay.

Jeff Dailey: So the language using generally applicable, would indicate that we would follow Robert's Rules of Order, Mayor and Town Council, Committees, at the suggestion of the Mayor or the Charter Mandate? My concern is, that the Mayor would not be able to suspend Robert's Rules of Order and we've noted Special Meetings, which could not allow for X number of days' notification to the public, that under FOIA dictates or defines a Special Meeting, so you might have an emergency. Well, certainly, the Mayor would want to suspend Robert's Rules of Order. She may be on television cameras, or he may be on television cameras, so I would like, as a citizen the Charter to give the elected official, occupying the Mayor's seat, that latitude and so Madame Mayor, I know that you prefer to abide by Robert's Rules of Order and that's fine; but the Charter, of course, is going to move us forward. You may not be Mayor in the future, there may be... who wants to suspend. The other time that it might be appropriate to suspend Robert's Rules of Order currently, is you kind of have a Mayor's corner on the agenda and you might want to address items that are not on the agenda and it would behoove a Mayor, at that moment, to suspend, to give an address and then the Mayor and Town Council, the Town won't be cited for talking about things that are not, in fact, on the agenda. You could forecast what's coming up, or a major concern, or a looming expense and you could do that for the benefit of the public, but you wouldn't be bound by it not being on the agenda. So those would be my suggestions for keeping the...

Mayor Jones: I appreciate your comments, but I don't think that either one of those is applicable to Robert's Rules of Order.

Jeff Dailey: Okay and I could be wrong.

Councilman Garde: That's a FOIA issue.

Jeff Dailey: That's my concern.

Mayor Jones: I think that's a FOIA issue.

Seth Thompson: It is.

Councilman Garde: Those are FOIA issues. The agenda vs. what you can talk about is a FOIA issue, not a Robert's Rules of Order issue.

Jeff Dailey: Right, but even so if Robert's Rules of Order were suspended during a Council Meeting, the minutes still would be taken and that would be noted.

Seth Thompson: The minutes still need to be taken under FOIA. Your Charter can't override FOIA and it seems like that's a lot of those issues; what can be discussed. The bottom line is it needs to be on the agenda if it's going to be discussed and Section 11 doesn't really affect that. The thing that requires that is the State Code. The same thing with keeping minutes. I know that your Charter also says you need to keep minutes, as well. If your Charter said you don't need to keep minutes; well, you still need to keep minutes.

Mayor Jones: Mr. Dailey, I was not part of the Charter Review, however, I believe if you could find the minutes as far back as the last Charter change, you would know that I vehemently opposed the ability for a Mayor to have that kind of authority and power. I would support the striking of it now. That would be my vote at this point. The only time that it actually was brought to my attention, I would not have participated in that, if you were at that meeting.

Jeff Dailey: I think that, with all due respect, I think that's the rudimentary difference between your viewpoint and mine. I don't see it as wielding power. I see it as a communication device. Sometimes Rules of Order are too restrictive and I think that an elected official should have all



the latitude he/she can have, within the law, no matter who that person is.

Mayor Jones: I believe that authority and/or respect is given to that position by it's sheer position as Chairman of the Council, so we will agree to disagree.

Jeff Dailey: Right. I'm just concerned that one hand is tied behind the back, if you don't have that latitude.

Mayor Jones: Thank you. Mr. Crawford.

Steve Crawford: Does the Economic Development Committee fall under Milton town meetings?

Seth Thompson: It is funny, because you are technically a Committee, so you're not included in that \_\_\_\_\_.

Steve Crawford: So my question was, I don't see Committee up there either, so I'm just raising that as an issue. By the way, our next Economic Development Committee meeting, so that you can attend, is...

Seth Thompson: I'll be there.

Steve Crawford: Thank you.

Seth Thompson: It is funny that it says Boards and Commissions and not Committees and your Boards and Commissions seem to be your standing bodies, so I have to read the intent, just based purely on the language. I don't know if they specifically meant to leave out Committees, but that's what they did, so you do use those terms specifically, later on, where it's Boards, Commissions and then Committees.

Mayor Jones: Well Quorum does apply to our Committees, as well. Mr. Collier?

John Collier: Okay. In this particular case, the reason Committees were left out is because Committees generally act as advisory groups and any decision that they make, still requires the endorsement of the Mayor and Town Council. Commissions and Boards do not require their endorsement. That was what the difference was in this particular case or was the thought, as to why Committees are not brought up as needing a Parliamentarian or anyone like that, because generally whatever decision a Committee makes, if your Water Committee makes a recommendation to the Mayor and Town Council; it is what it is, it's a recommendation. The parliamentary action occurs at the Council level.

Seth Thompson: So there's a little more procedural latitude given to Committees, because somebody else is going to have to...

John Collier: Most Committees still require a quorum and I think that's generally accepted and then most of them operate by Robert's Rules of Order, but I don't think they're held to it in the strictest of fashions, because again, Robert's Rules of Order is generally, as I perceive it and as I have been taught, is an advisory document that generally gives you a concept by which... but even within it's own self it allows for various groups to alter Robert's Rules of Order to suit their needs.

Seth Thompson: There are competing Rules of Order; so there's also Masons and a lot of times, frankly, there will be a motion to suspend all rules that interfere with any action on this and that's allowed under the Rules, right? So you can essentially do away with the rules by using the rules.

John Collier: Exactly. I think one of the first things you learn when you learn parliamentary procedure and Robert's Rules of Order, is that you can adjust Robert's Rules of Order to suit the needs of your organization.

Councilman Garde: In accordance with their Rules.

John Collier: In accordance with their Rules. That's generally what the consideration was regarding a parliamentarian at meetings.

Councilman Coté: Question. Which Commissions don't require the approval or pass through or a vote for what they recommended by Council?

Councilman Garde: The Board of Adjustment.

Seth Thompson: Your Board of Adjustment that handles variances. You have your Planning and Zoning that handles site plans and that's a Commission.

Councilman Coté: Don't we vote on preliminary stuff?

Seth Thompson: Not for site plans, so the way you have it set up, you vote on your sub-division plan, so you're taking a blank slate of land and cutting it up into different parcels; the Council votes on that after the Planning and Zoning Commission, but once those parcels are cut up and you have an individual parcel and somebody says I'm going to build a hotel on there; they submit a site plan and the Planning and Zoning Commission is the one that says okay, you need to put a buffer here, can you adjust the angle of your parking lot? And that doesn't come to you.

Councilman Coté: But there is some initial process that is still a Commission passing something forward to the Council to approve?

Seth Thompson: Right, the sub-division process. Definitely.

Councilman Coté: Okay.

Mayor Jones: The Board of Adjustment decisions do not come back to us.

Councilman Coté: Right. That one I'm clear on. It was the other. What other Commissions?

Mayor Jones: Historic Preservation.

Councilman Coté: Okay, but I remember seeing things recently from Historic Preservation.

John Collier: Historic Preservation only comes to the Mayor and Town Council if somebody is appealing a decision.

Councilman Coté: Okay.

John Collier: But as far as their decisions being binding, they're binding until such time that somebody makes an appeal to that, then the Mayor and Town Council intercedes.

Councilman Coté: So my memory should say what we've been seeing is reports, not anything we have to act on.

John Collier: You've been seeing reports. Yes, Sir.

Councilman Coté: I'm just trying to separate the difference between Commissions and Committees, because in the initial sub-division piece coming from a Commission, Council still votes. So it's specific items that we don't vote on and specific items that we do vote on, coming out of that Commission. I'm not sure how we get to make the differentiation between Commissions and Committees.

John Collier: Generally Commissions are appointed for a term; members of our Committee's are appointed for, if it's Ad Hoc, until the particular issue that they're called together for is resolved and you have some Committee's that have stood for long term, but their appointed term, the members get to change it at will. That would be generally the difference. There's not nearly as high a level of taking care of the minutes and such. Commissions and Boards are recorded. Committee's are recorded on the master system, like you all use and then Committees are usually recorded on little hand held devices and they're not normally transcribed, unless requested for them to be done, but the records are maintained.

Seth Thompson: From a legal standpoint, if you look in your Town Code, there are going to be procedures that are identified and jurisdictional elements that are identified for your

Commissions and your Boards. They won't be for your Committees. The reason for that, if you have a variance you want a standing Board of Adjustment that you don't have to wait for the Council to appoint somebody. You'll see in your Code those Commissions are identified in the Code.

John Oates, 115 Arch Street: My question is, how does the Board of Elections fit into this scenario?

Seth Thompson: Well the Board of Elections has their own section.

Councilman Garde: We went through that earlier.

Seth Thompson: We did.

Councilman Garde: They're a standing Board. Their hours are enumerated in the Charter.

Seth Thompson: They are. Those Boards need to follow Robert's Rules of Order, if the amendment passes, generally at their meeting.

John Oates: So a recommendation made by the Board would or would not, need be concurrence of the Council?

Seth Thompson: A recommendation for what, changing the Town Code?

John Oates: For anything.

Seth Thompson: There could be something in sub-chapter five of Chapter 75 of Title XV, that automatically lets the Board of Election do something; but if not, I think it's going to come to Council.

Councilman Garde: My recollection is the Board does the counting and announces to the Mayor and Town Council the results of the election. The Mayor and Town Council don't approve it. It is certified by the Board of Elections to the Mayor and Town Council. The election is certified by the Board of Elections. I'll find the language.

John Oates: I understand that, Sam. What I'm specifically referring to is recent recommendations to the Charter and Ordinance Revision Committee, for example, regarding the change in the requirement of State issued photo ID to register, for example. Now is that something that the Board of Elections has a unilateral power to decide?

Councilman Garde: No, because the Charter decides that and whatever is in the Charter, you do not have the authority to supersede the Charter. The Charter says what are the requirements.

John Oates: Okay and we're making a recommendation to change that.

Councilman Garde: You make a recommendation to change the Charter.

John Oates: Correct, so where does it go from there? It goes to the Charter and Ordinance Revision Committee?

Mayor Jones: It should have come to Council.

Councilman Garde: To the best of my knowledge, there is no written procedure for that, but every recommendation that was made was considered by the Charter and Ordinance Committee and the Charter and Ordinance Committee made a recommendation that accepted almost everything you had, or tweaked it a little bit and we said supervised by, rather than under the purview of, or whatever little tweaks and we may have not accepted one or two of your recommendations and I don't know that that was ever gone back and forth over, except at the last meeting. At the last meeting, several members of the Board of Elections were there when we went through this and we made changes that... or recommendations to change in there with...

John Oates: And I wasn't there. Sam, what I'm going at is what Seth indicated about the language that says Milton Town Boards and Commissions, in Section 11. I thought Seth said that their input does not need concurrence from the Council.

Councilman Garde: No, what he said was they should generally follow Robert's Rules of Order. It's the only thing I think he said.

Seth Thompson: If we're talking about recommendations related to the Charter, I think that's probably easier to talk about that example directly. So a Board will have it's assigned duties whether and this is actually a prime example of you might have duties assigned to a Board via both the Charter and the Town Code or the State Code, so you have to see where your source is, but I was skimming through the Delaware Code and it looks like the Board of Elections does make some determinations in terms of complaints; that they would file a written decision, so that wouldn't come to Town Council. It looks like those appeals if they are appealed go to the State Election Commissioner. As far as the Charter, I view it as well since Council is going to be the ultimate party to say Representative, Senator, please present this bill, I view it as Council needs to dole out the responsibility for creating the document. That's not to say that the Board of Elections shouldn't give input, but I think probably... and this is one of those items... we all know each other, so it probably shouldn't need to be this formal, but I think if somebody said what's the proper procedure for that, I think it's probably the Board of Elections going to the Charter and Ordinance Committee that was tasked with their view and saying here are our thoughts, can you consider them, because the Council's expecting that recommendation to come from the Charter and Ordinance Committee. That's very technical. I think that might be getting a little too...

John Oates: You said the word "Board" in Board of Adjustment and they have some independent decision-making ability, so the use of that same term Board, when applied to Board of Elections and Board of Adjustment, does not imply the same power of decision-making.

Seth Thompson: You have to look at what each Board is constructed to do, so the Board of Elections is going to handle pre-election complaints based on the State Code. That's one of it's assigned tasks.

John Oates: Okay, so it's not by it's very nature, the use of the term "Board", does not imply the same level of decision-making for these different Boards?

Seth Thompson: I think that's fair to say. You're just going to have to look at each one on an individual basis.

John Oates: Okay. Thank you.

Mayor Jones: Thank you.

Seth Thompson: Anything else on number 11? If not, we'll move to 12. So we have Town Council added. We have a correction in terms of which Appendix to refer to and then just some other basic clean-ups.

Councilman Garde: Just a comment here. This is another place where the voting, by the way we write this, recuse the Mayor from a vote and filling vacancies. The office shall be filled by majority vote of the remaining members of the Town Council. I think Mayor should be involved. I think it should be Mayor and Town Council.

Seth Thompson: I think you're right. I think remaining is referring to the fact that there's a vacancy, due to somebody passing away or resigning.

Councilman Garde: Right, so I think it should be Mayor and Town Council.

Seth Thompson: I think that makes sense. To the remaining members of the Mayor and Town Council. She's not a remaining member. Section 13.

Mayor Jones: Could we just take a moment please? Mr. Kanakos, this issue of vacancies was something that I know you had addressed during your campaign and the filling of them, so I

want to make absolutely sure you did not want to have a comment on this, this evening.

Ted Kanakos: No, this is fine.

Mayor Jones: Thank you.

Seth Thompson: Disqualifications and this somewhat mirrors your qualifications, in the sense that if somebody during their term, is sentenced for a felony... now that I'm thinking about that word, sentenced; sometimes sentenced and hearings do happen after; they can often be delayed; there can be pre-sentence investigations...

Mayor Jones: Should it be convicted?

Councilman Garde: I think the intention there was to say found guilty.

Seth Thompson: I think you're right. I think there's a conviction.

Councilman Garde: Shall be convicted, is a better term.

Seth Thompson: I think that's right. Instead of "sentenced for", I think "convicted of" a felony, or shall for any reason cease to be a resident, shall be disqualified to act as Mayor and a member of Town Council. I think that makes sense. That mirrors the qualifications to run for Council. Section 14 on Contracts. The only change on page 22 is adding in Mayor and Town Council, so unless there are any questions, we'll move to page 23.

Ted Kanakos: If the Mayor, for any reason, is disqualified for any reason, does the Vice Mayor automatically takeover and do we have a Vice Mayor at this point?

Seth Thompson: I think we're waiting for the organizational meeting in two weeks.

Councilman Garde: The answer is yes. In the place where it says the duties of the Mayor, it says will be assumed by the Vice Mayor, whether he or she.

Mayor Jones: In the absence.

Seth Thompson: Back in Section 8?

Councilman Garde: It's not in 8. It may be later on. I believe it's under just Mayor.

Mayor Jones: It's under the Mayor's duties and it's at the very end, but are you recommending that perhaps it be very much clarified here that the position roles to Vice Mayor?

Seth Thompson: So looking at Section 14, just for background, this is a limitation on Contracts in terms of the Town entering into a Contract where the Mayor and Town Council or anybody in the Mayor and Town Council would have some sort of pecuniary interest? I don't know, frankly \$50,000 is a good sum of money. I don't think over time, that sum seems small to me, or that it should be raised, but it's just a thought that whenever we have these numbers, if they're somewhat antiquated, maybe you need to raise them, but \$50,000 seems like a lot of money to contract for in the Town. The only other thought that I had by looking at it, it mentions a General Partner. I think if you were a Limited Partner, it probably should still apply. I think we could just say Partner.

Councilman Garde: Agreed. That could be a small "p" too.

Seth Thompson: Yes.

Councilman Garde: Good comment.

Mayor Jones: Yes, Steve.

Steve Crawford: I don't mean to poke the hornet's nest, but should we include real estate?

Councilman Garde: If it's a Contract for the purchase of real estate, it falls under this, so it's included.

Seth Thompson: I wouldn't hang my license on saying yes, it doesn't count, it's just real estate.

Councilman Garde: It says any Contract. I don't know of any purchase of real estate that doesn't come under a Contract.



Seth Thompson: I understand Steve's point, is that it says it's only for materials, supplies, services, work or labor. We can certainly say property, materials... because property implies personal and real property. That works.

Councilman Garde: Sorry. That's a good comment. I'm sorry, I was reading in the wrong place.

Steve Crawford: That was Alex's comment.

Mayor Jones: Work, labor, property? Where are you putting it in?

Seth Thompson: I put it at the beginning.

Councilman Garde: Property, materials, etc. Good catch. Do you want to say real, or property includes real property?

Seth Thompson: It does. It includes real and personal, so if you're buying \$50,000 worth of cars...

Councilman Garde: Jewelry or something.

Seth Thompson: I think that covers it, but that is important. That actually is the one that probably would come up more frequently than not, in the event that there has to be a taking.

Councilman Garde: Yes.

Mayor Jones: We're still on Section 14? In the eighth sentence, a Disclosure Form is required to be on file in Town Hall for each elected and/or appointed official and kept up-to-date and current at all times by such encumbrance. Is that our initial Ethics Form?

Seth Thompson: It really is. It asks for that information because it talks about all company's doing business in Milton, in which you own stock, share or serve on the Board.

Mayor Jones: So that's what we're calling our Disclosure Form here, is actually the Ethics Form?

Councilman Garde: That's a very good catch. When I read it, that's what I was reading. I was reading an Ethics Form. Since we've cited it as Appendix B, or Exhibit B or whatever it is, unless there is some other form, I think we should refer to it as the Appendix and give it its proper title.

Seth Thompson: I agree. I don't think the Town has used a different form and looking at the form, it talks about any company's doing business, relation by blood or marriage.

Councilman Garde: This is an ethics disclosure that we're talking about.

Mayor Jones: And if it must be kept up-to-date, is it something that we should do on an annual basis? Just saying. Otherwise, how are you going to keep track. The Ethics Form on an annual basis, otherwise how would you catch that? Annual.

Seth Thompson: It's funny because the onus is placed on the Office Holder, because it says it has to be kept current at all times, so if you start a new business venture, you're really supposed to come in and disclose that.

Mayor Jones: Or a new address, or any of that, right?

Seth Thompson: If you buy a property.

Mayor Jones: Because that Ethics Form doesn't... would you really be able to review that with reference to a bid or a contract to assure full disclosure and compliance? Is that actually contained in our Ethics Forms?

Seth Thompson: List the business activities... self employed. Name of business or company. List the business activities this business has with or in the Town of Milton. It seems to go to it.

Mayor Jones: Okay.

Councilman Garde: This should say instead of a Disclosure Form, an Ethics Form. Maybe just to simplify the drafting (Appendix B). Will that work?

Seth Thompson: Yes.

Councilman Garde: An Ethics Form (Appendix B) is required to be on file for each elected and/or appointed official and kept up-to-date annually by such encumbrance.

Seth Thompson: Annually almost implies, let's say I'm on Council and I buy a property, or I start a business in town, annually makes it sound like well it's not January 1<sup>st</sup>. I don't have to do it. I really think it should be when you start... How often are people starting businesses? I can't imagine...

Councilman Coté: The way it's written, is if you change anything it's time to update the Ethics Form and I would rather have it be that way.

Seth Thompson: And I think annually makes it sound like you only have to do it once a year.

Councilman Garde: So we'll leave it the way it is? But that leaves it up to the incumbent; it puts the responsibility on the incumbent, which is fine with me.

Mayor Jones: Yes.

Seth Thompson: Nothing else on page 22? Page 23. So the big change on page 23 is and I'll defer to Mr. Collier to explain a short form bidding process, is maybe what I would call it.

John Collier: In order to speed process and eliminate a lot of things, it was suggested that we look at some possibilities and this is a procedure that's used currently by the State of Delaware and this has been changed slightly to fit Milton and generally the idea is that any purchase, for other than Professional Services or materials that's greater than \$5,000 up to \$20,000, will give the Town Administrator or whoever is charged with that particular action for that department, the ability to solicit no fewer than three letter bids from qualified and responsible sources or proprietors. It's more to expedite the buying process. There are a lot of things that we spend a considerable amount of money on advertising and writing specifications and everything else, that could be bought in this fashion or services secured in this fashion, rather than go through that long, lengthy process. It's there for Council's consideration. It came from a suggestion I think from Council and then again it was also discussed with the town financial staff as to if it was of any use to them and it was generally agreed that it would be nice if they had this ability. They could certainly see a good use for it.

Seth Thompson: I envision the classic case being some material that you know that there are only three provider's in Sussex County and it's not a material that you're going to advertise across the world and you say, I'd like to ask just those three people. I know they all do good work and they can all provide the exact same item. Let's get quotes. Let's not print it in the newspaper.

Councilman Garde: I think it's also for something that can be supplied conveniently by Ace, Lowe's and Home Depot; if the value of it is small enough, it allows the town staff to use an abbreviated form to get something good from local vendors or people that we have relationships with. It's still a competitive bid. It's still required to be competitive. It's just not required to go through the full... It's got to go through a bidding competition, but not the full posting and all the rest of it. This is more an Internet type fit, isn't it? Or no? I guess these are letter quotes. I stand corrected.

Mayor Jones: I just want to give a quick example of what we're talking about here and look to Mrs. Rogers for confirmation. We had an accident in the park last August and we had an injured person and partly through our County Representative, partly through the help of our Police Department, we applied for extra lighting in the park and some of that lighting and funding is readily available, except the lights tipped \$5,000 and so the whole process had to go through a

bid situation which took a good... still waiting. Still waiting and yet the funding is there, we're ready, but this process is what's holding that up, so I just wanted to give you that as an example and we're talking not very much over that \$5,000 threshold that's holding up a public safety issue right now.

Seth Thompson: And just a note on the “but may be used”; that's just clarifying the fact that these are the exceptions, so maybe an exception applies and you don't have to, but you can still competitively bid, if you have the time. That's what the “but may be used” addition does.

Councilman Garde: And from a drafting perspective, I don't think the sentence which starts with the word “Which”, is a sentence, so I would recommend a semi-colon after \$200,000 and a small “w”.

Seth Thompson: Great.

Councilman Coté: \$20,000?

Mayor Jones: \$20,000?

Councilman Garde: \$20,000; w...

Seth Thompson: If nothing else on page 23, then page 24 and we have the renumbering of the exceptions to competitive bidding and then the Mayor and Town Council language and then we have Section 15.

Councilman Garde: Okay, on seven, the second line after the word “legal”, I believe there should be a comma.

Seth Thompson: Oh yes.

Councilman Garde: It's not legal engineering. It's legal, engineering.

Mayor Jones: Good catch.

Seth Thompson: What we do is far from a science, so you shouldn't get it confused with engineering.

Councilman Coté: Would anybody feel really badly about adding Accounting to Professional Services?

Seth Thompson: Which is funny, because that's been traditionally considered within that, but you could spell it out, because...

Mayor Jones: Or other. It says, or other.

Councilman Garde: I don't mind putting Accounting in.

Mayor Jones: Where are we putting it?

Councilman Coté: Anywhere in that order.

Councilman Garde: Planning, Accounting...

Councilman Coté: Thank you.

Seth Thompson: It used to be that if the State required a license, then you were considered a professional, but the State requires a license for everything now. This used to be very easy for me to say, yes, that's a Professional Service. No, that's not a Professional Service. It's a lot more difficult these days. I appreciate adding in Accounting. Kristy, can you think of any other issues that you have had? Fortunately not. Good. So section 15.

Councilman Garde: I recommend deletion of the words “and President of Council”. There is no place where the word President is used, except in this title, so I think it should say, just duties of the Mayor.

Seth Thompson: Okay, the correction to the reference for the Ethics Form at the bottom of page 24, anything on page 24? How about on page 25, where there aren't any changes, other than at the bottom correcting the reference to the Ethics Form?

Councilman Garde: There are two conforming language comments. In C on the fourth line, it says at the pleasure of Mayor and Town Council and at the end of that line it says Mayor and Town Council; that's just conforming the language.

Seth Thompson: Just one thing of note. Your Commission members, your Board members have to be resident's of the town. You can see that your Committee members, your Ad Hoc Committee's, your working groups don't have to be resident's of the town.

Mayor Jones: Now, if you don't mind going back on page 24, I just wanted to make sure I was reading this. At the very bottom in b., members appointed to Boards and Commissions, including Board of Adjustment, Town's Planning and Zoning Commission... with the Advise and Consent of the Town Council, but only after completing the Ethics Forms and reviewed by the Mayor and members of the Town Council. I don't believe that's being done.

Seth Thompson: I think you're right.

Mayor Jones: These are some of my own notes, because I do have some of those. I don't think that's being done.

Seth Thompson: Kristy, do people say I'll fill it out once I'm appointed? Is that how it happens? Do you know what I mean?

Kristy Rogers: Usually they stop in and get the form after they are appointed.

Mayor Jones: And we put that caveat on it when there's the appointment, but I'm just saying it says here reviewed by... and I don't think that's... and is it necessary, is the question?

Seth Thompson: The information that's on there is really designed to... it is that disclosure function, so it talks about your business. I suppose that could be helpful. Let's say you're appointing somebody to an Ad Hoc Committee and they run X business and you know that that's a business that they will bring valuable experience to... So I suppose that could be helpful, but for the most part, when I look over your Ethics Form, it's really designed to avoid Conflicts of Interest. I don't know, other than saying yes this person has a good business background, that it would be that helpful in Council saying let's appoint and confirm this person, or in this language appoint and...

Councilman Garde: It just says reviewed. There's no requirement for a vote or an approval, but I viewed it as permissive, meaning that Mayor and Council may review it, but the drafting is not as permissive as I interpreted it, so maybe we want to change the drafting. We can review it whether it...

Seth Thompson: Available for review?

Councilman Garde: Either that or just delete the reviewed by Mayor and Council; because we can review it anyway.

Seth Thompson: Right, it's going to be FOIAble.

Councilman Garde: Yes.

Mayor Jones: Now the point here which seems something that needs to be remembered is, that these appointments can be made with the Advise and Consent, but only after completing, so that's going to have to be something that's paid attention to, at least on my part and not bringing appointments forward until that's been completed.

Seth Thompson: Admittedly, we've been loose on that, that we appoint conditioned upon...

Mayor Jones: Only after. Right.

Seth Thompson: I mean you could change it, instead of but only after; you could change it to with completion of.

Mayor Jones: Only after completion and acceptance of an Ethics Form, I guess. Wouldn't it be,

just not completion?

Seth Thompson: Again, I just don't know what's going to show up on that Ethics Form that you'd say that person is not fit to serve. It does talk about other elected or appointed positions they hold in Town government, but you should be aware of those already.

Mayor Jones: Okay, but will we agree that only after completing is a mandate. Isn't that?

Seth Thompson: It is certainly a temporal mandate, that one has to happen before the other.

Councilman Garde: Do we swear people into the Boards and Commissions like we do Town Council, or no?

Seth Thompson: They don't take an oath.

Councilman Garde: Okay.

Ted Kanakos: Actually Planning and Zoning used to take an oath, when I was appointed; John Brady gave the oath out to a few of us that were on there.

Seth Thompson: I don't think it's in...

Ted Kanakos: [Unintelligible]

Seth Thompson: I can see that there is some conveyance that this is serious, when you do that. I don't think it's required the way it is for your Council members, in the sense that the oath is identified. The Board of Elections has an oath that's identified for them, too.

Councilman Garde: Here's another interesting thing. The very first sentence here says that the Mayor shall vote on all matters brought before the Town Council for a vote and we just eliminated one of them. So that's why I brought it up, though, because this sentence is in conflict with the sentence where we just intentionally left the Mayor out.

Seth Thompson: Right. I suppose the sentence was designed to say... because there are certain towns where the Mayor essentially acts as the Town Administrator...

Councilman Garde: I was going to say unless otherwise provided in this Charter.

Seth Thompson: So, shall preside at all meetings thereof and unless otherwise provided in this Charter.

Mayor Jones: Where are you adding that?

Councilman Garde: Right after "and" on the second line.

Mayor Jones: And shall...

Councilman Garde: Before "shall".

Seth Thompson: So it will say "and, unless otherwise provided... we use "herein" a lot.

Councilman Garde: Herein is good.

Seth Thompson: Okay, "shall vote on all matters brought before the Council for a vote".

Councilman Garde: Yes.

Councilman Coté: And that would cover any item with a Conflict of Interest; the Mayor would have to recuse him/herself.

Seth Thompson: I thought the same thing, because that's in here, as well.

Mayor Jones: At the top of page 25, if we have moved in that direction?

Councilman Garde: I'm still at the bottom of 24.

Mayor Jones: Okay.

Councilman Garde: Are we going to take out reviewed by? Because Appendix B is generally speaking, not reviewed by Mayor and Town Council.

Seth Thompson: I just don't know how helpful...

Councilman Garde: Either leaving it in or deleting it is?

Seth Thompson: It's not a resumé.



Councilman Garde: But it seems mandatory.

Seth Thompson: I agree, but...

Councilman Garde: Do you want to say “and available for review by”?

Seth Thompson: Sure. I think that works.

Councilman Garde: Would that help?

Councilman Kost: I'm a little confused. Just completing an Ethics Form, someone has to look at it and determine that you're ethical. So just having it filed somewhere and say someone may review it, seems to me defeating the purpose of having the form in the first place. Someone's got to be able to look at the thing.

Councilman Garde: The Town Administrator is the one who's actually reviewing it. When I filled out mine, the Town Administrator reviewed it and so they are reviewed and filed in the Town Hall in the custody of the Town Administrator.

Councilman Kost: My question is, after the Town Administrator reviews it, does she come to somebody and say hold it, time out? Council you've got a problem. There has to be a mechanism if you have a form and it doesn't work, someone doesn't meet the requirements, that something happens.

Seth Thompson: Right. Here's how I would envision that process working, would be if the Town Administrator would alert me, if it's a Commission or a Council, so that I can advise that person whether or not they have a Conflict on a particular issue. I think that's really what the form's designed to do, is to identify in writing...

Councilman Kost: That's the procedure then.

Seth Thompson: Exactly. Yes. I guess while we're looking at or discussing the Ethics Form, it does say please list the numbers and addresses of properties, including acreage, if more than one acre that you own within the Milton town limits. I don't know, maybe at one point in time one acre was a fairly small amount; but that seems like a lot of land. I don't know, maybe when we get to the Ethics Form, maybe we eliminate that limitation; that you could have nine-tenths of an acre and not disclose it, but that doesn't seem right. Top of page 25. Anything?

Mayor Jones: Yes. “Members of these Boards and Commissions must be legally registered voters in the Town of Milton.” What if they're not registered voters, but they live within the jurisdiction?

Seth Thompson: So they don't want to vote in the election, but they do want to serve on the Board?

Mayor Jones: Yes.

Seth Thompson: I mean, you could do it that way.

Mayor Jones: This says “must”, which means that no one that you seat on... particularly I take it as those three Boards, can be anything but registered voters. It's an argument for how it's written.

Seth Thompson: I've got to think though, that if someone is willing to dedicate their time to public service, they're going to show up at the polls, but I agree with your point. This is a prerequisite.

Mayor Jones: I have a perfect example which I may not give in public, so yes.

Councilman Garde: So should we say “legally eligible voter's”, rather than “registered”? Would that be to the people's liking, better than...

Seth Thompson: So that reserves the person's right not to vote, but then they can still participate? I mean, that's fine.

Kristy Rogers: I think we use the term “qualified elector”, so they were qualified to vote.

Councilman Garde: Yes, you're correct. That would be the conforming term.

Seth Thompson: Shall be qualified...

Councilman Garde: Must be a qualified elector in the Town of Milton.

Seth Thompson: And the way that sentence is set up, it's plural; it's members of the Boards.

Councilman Garde: Yes. Yes. Members of the Board must be qualified electors in the Town of Milton.

Mayor Jones: So we're dropping legally, right?

Seth Thompson: Yes.

Mayor Jones: And further down on that, it's the very last sentence just before c., “The Mayor shall appoint to all Boards and Commissions a replacement to fill such vacancy at the next regular Town Council meeting.” I can tell you that is nearly impossible and in the case of Planning and Zoning that's been a very long standing issue, but it says “shall” appoint. If you take that sentence apart, at the next regular Town Council meeting. So I just wanted you to take that into consideration.

Councilman Garde: How about “as soon as possible”, instead of at the next regular Town Council meeting.

Mayor Jones: As soon as possible. Yes.

Councilman Garde: Take out at the next regular Town Council meeting and make it as soon as possible.

Ted Kanakos: To avoid any appearance of a Conflict of Interest Board and Commission members are required to recuse themselves from participating in discussion relating to a matter in which they might have a personal interest. Can you define a personal interest? Is it a financial interest?

Seth Thompson: I think was a more recent addition to your Charter, because, I'm going to go off memory here; but I think it's Title 29, Delaware Code Chapter 58, defines personal interest and it's actually broader than that person; that's also family members.

Ted Kanakos: The reason I say that is when the Bacchus Wine Bar came to town, before they did anything they had called me, because I had done layout design for restaurant's and they came to my home for about two or three hours and we chatted. Then when they came to Planning and Zoning, I recused myself; but I had no interest in it, I was just helping with their plans; but I still figured I shouldn't say anything and yet everyone said I didn't have to recuse myself, but I wanted to make it very clear that I knew what they were doing and yet what they were discussing didn't concern me one way or the other. It was very objective. I didn't charge them for anything. It wasn't that type of thing, but I had no personal interest; but only because I made contact with them I thought I shouldn't comment on it.

Councilman Garde: I would have done the same thing and I think you did the right thing, because the words in any of these things say appearance and to avoid any appearance of a Conflict of Interest. There was no Conflict of Interest, but somebody might have interpreted it as and recusing yourself... I think you did the right thing in respect of the letter and the intent of the law, rather than the specific letter of whether you actually had a Conflict of Interest.

Ted Kanakos: Okay. Now, this somewhat touches on this issue. When I recused myself, I sat in the audience and someone got very upset and said I should have left the room.

Seth Thompson: No, I've never taken that position.

Ted Kanakos: Thank you. I didn't think I had to leave the room, but they said they called the

State on this issue.

Seth Thompson: I'm looking at the State Code and just by way of background, when it comes to your Code of Conduct, Towns can have their own Codes of Conduct, but they need to be approved by the State. There's a Board that does that. You guys don't have that, therefore, you fall under the DelCode, the Code of Conduct and it says that it applies to public employees and officers and officials and you are included in that definition. In here the defining of personal financial interest and it talks about a legal or equitable ownership in an enterprise of more than 10%; 1% or more in the case of a corporation who's stock is regularly traded on an established securities market; and then the person's associated and they received in excess of \$5,000 as an employee, officer, director, trustee or independent contractor; but that's where that language comes from. Frankly, the State Code controls on your Ethics duties, anyway, because you don't have an approved one that's more stringent. You're allowed to be more restrictive. You can't be less restrictive and you have to go through the process to get it approved, if you're going to be more restrictive and you guys haven't done that.

Mayor Jones: Is it a place, or is it even worth stating, that there's a note there; have a personal interest as defined in the State definition Code of Conduct, or anything? I don't want to put too much in here, but what's it going to refer to?

Seth Thompson: Yes.

Mayor Jones: If you put it in as defined by the State, it will ever, as that changes, change with it, but I just don't know if there's a necessity for it here.

Councilman Garde: I don't know about a necessity, but I think it's clarifying. Sam Garde sees no reason not to do that. If we could take some wording from Council...

Seth Thompson: So how about at the end of that sentence "in accordance with 29 Delaware Code, Chapter 58."

Mayor Jones: Code of Conduct.

Councilman Coté: Or, is there an alternative that you might...

Seth Thompson: You could say the applicable Code of Conduct.

Councilman Coté: Or refer people to the Public Integrity Commission?

Seth Thompson: That's the same section and the same chapter.

Councilman Coté: I know, but if we say if you're not sure, contact the Public Integrity Commission.

Seth Thompson: I feel that's more of a training thing than a Charter language thing.

Councilman Coté: It gives people a specific contact, rather than have a non-attorney try to interpret this into their circumstance, because I don't know that we're going to run into a situation where somebody owns 1% of a public traded corporation; not so likely here in Milton.

Seth Thompson: That's doing business in Milton, correct.

Councilman Coté: But we do have other smaller issues.

Mayor Jones: If you decide to put in the reference to the Delaware Code, would you put that they might have a personal interest as defined in 29 Delaware Code Chapter 58, or not?

Councilman Garde: That's the way I drafted it.

Mayor Jones: Or in accordance?

Seth Thompson: Part of the problem, so the definitional section is in one section of that chapter and the actual meat is in a different section, so that's why I said in accordance of the \_\_\_\_\_, just defined in, because then it makes it sound like we're not talking about the entire chapter.

Councilman Garde: In accordance with Section 29 Delaware Code Chapter 58.

Mayor Jones: Code of Conduct, right?

Seth Thompson: Yes, we could name it the Code of Conduct.

Mayor Jones: Is there a point here of saying any other matters, refer to Public Integrity Commission. Again, that's instructional, instead of the law, binding. Right?

Seth Thompson: I just view that as training that we need to do for people, but it's not normally something you see in a Charter.

Mayor Jones: I'm alright with adding the Delaware Code, if everybody else is?

Jeff Dailey: This is a pet peeve of mine, because it precludes someone from participating in the discussion, if there's an appearance of primarily a financial interest; but this is where the Town may lose out because that person may be an expert in the area and to not allow participation in discussion and I have seen this in action. I have seen a board member say to the assembled, I will not be voting on this issue, but I will be participating in the discussion.

Seth Thompson: The way that our case law shakes that out is it's very difficult to be wearing two different hats. I think that's hard, because even participation in the discussion, but then recusal in the vote, our Courts have said that's not really appropriate, because at that point you've already influenced people.

Jeff Dailey: But that's what it's all about, influencing and communicating.

Seth Thompson: I think the problem is that the Town needs to find an expert that doesn't have that Conflict of Interest, is the practical result of that; because where do you draw the line? Well, I'm speaking as an expert, not as an interested party.

Jeff Dailey: Right, but Seth we're not talking about experts or find objective folks; we're hoping for the objectivity and the expertise to come from the participants on the Board.

Seth Thompson: We can talk about hope a lot, but there's just a threshold that's set and this is really in compliance. Let's say we put that in here, I think the person's running afoul of the Code of Conduct anyway; that's the problem, in which case it's then a disservice that they're mislead; that they can participate in the discussion and then somebody files a Public Integrity Commission complaint when they shouldn't have. It is difficult when you lose out on something, but there are just certain sacrifices that unfortunately have to be made. Ideally, you could get somebody else with similar knowledge without that personal interest.

Jeff Dailey: Unfortunately, the issues that come up in a small town, they can have a history of 3 to 5 to 7 years and so those who are closest to the subject matter, have the history; you would be hard pressed to go outside the community and find someone who has that history. That's the loss of which I'm hinting at. Okay? Thank you.

Seth Thompson: Middle of page 25. Anything? We already did the addition of Town, before Council. Anything else on page 25?

Mayor Jones: At the bottom, where and be reviewed by Mayor and members of the Town Council prior to appointment again.

Seth Thompson: We have the same thing.

Mayor Jones: And we ought to have it at least as a consistency to page 24; so would it be and be available for review.

Seth Thompson: Turning now to page 26.

Mayor Jones: On page 26, near the end of c., the Mayor and Town Council shall have the right to set sunset dates, Committee's and/or assign completion dates for work of any such committee's or other entities. We've begun to move in the direction of Resolution. Should we use the word here? Should we actually embrace that that's what we will do?

Seth Thompson: Yes, that's defining the vehicle. Obviously, your Charter dictates the substance. I don't know if we need to do it. In fact, I think in your Code, as opposed to the Charter, it talks about acting by Resolution in certain things and Ordinances in others, but I do like that we're getting into that. I like that things are spelled out in writing.

Mayor Jones: But we just don't add it to the Charter. That's fine. Okay.

Councilman Garde: And Ted, in response to your comment, d. on this section, turns over to the Vice Mayor, in the absence of the Mayor, and all of the duties.

Mayor Jones: Does anyone in any history of the Charter believe or understand the Vice Mayor just got dumped in there under the Mayor; is that something that needs any separation? Is it just...

Seth Thompson: On some level it fits within that section title, because it's talking about the Duties of the Mayor and what happens if the Mayor isn't available? It's not the easiest to find.

Mayor Jones: We have a whole section on the Secretary and the...

Councilman Garde: But the Secretary may have an Assistant Secretary and the language is comparable indeed on Secretary and comparable on whatever part it is on the Treasurer. It's not d., but it's f. under Treasurer. They use the same terminology. Well for Treasurer and Secretary they use the word "devolve". I don't think we used the word devolve for the Vice Mayor. It doesn't say devolve, where it does for the other two.

Seth Thompson: The one element, while we're still in 15, so it talks about the letter that's to be sent to your Ad Hoc Committee's and those people that have volunteered their time, I like the word to be "sent", so that letter is to be sent prior to the date stipulated; just because you never actually know, I suppose it's easier nowadays with email, but you never actually know when something's received.

Councilman Garde: So instead of receive, it should be "sent"?

Seth Thompson: Yes. Sent. I think that's easier for the Council or for the Town to say, yes, we sent that letter on time.

Councilman Garde: That those be sent the letter? Okay? Then the next sentence is to be sent, rather than received.

Seth Thompson: Exactly.

Councilman Garde: Prior to the date to conform that. Mayor Jones, it's interesting that the language of it shall be the duty of the Vice Mayor, in the absence of the Mayor, to preside at all meetings and then this whole sentence it says, to perform such other duties as are prescribed in the Town Charter, so it really, or Ordinance, it's really quite different from if you just flip over to Section 16.d., it's easy enough to find it; where it says the powers and duties of the Secretary shall devolve upon and that means all of the duties; but we have to actually prescribe duties for the Vice Mayor. They don't devolve upon. Do we want to leave it the way it is? Because it actually puts an obligation on Town Council to say what the duties are of the Vice Mayor. Because the full sentence it doesn't give the Vice Mayor anything other than to preside at all meetings, without some additional definition either by Ordinance or by the Charter and there's nothing in here by the Charter.

Seth Thompson: It's funny, because of the way the sentence is structured though, it talks and to perform other such duties.

Councilman Garde: And to have other such powers, as are prescribed; but the as are prescribed, I say involves any of it, or by any Ordinance.

Seth Thompson: This is a question, this is only behind the debate over the Oxford comma, in

terms of what we get into it when drafting; but it seems to set it up where it's a list of three things, so it's to preside over meetings, to perform other such duties, to have other such powers and it seems like the as prescribed by Charter and by Ordinance, really is only modifying the third in that list. Right? I think the middle one stands alone.

Councilman Garde: To perform other such duties?

Seth Thompson: Right.

Councilman Garde: What duties?

Seth Thompson: I think it's whatever the Mayor needs to do in addition to presiding over meetings, right?

Jeff Dailey: St. Patrick's Day Parade. I did the same thing.

Councilman Garde: I just note that we don't use the term devolve upon and I don't know if that was intentional or not; we use the words devolve upon as to Assistant Secretary and to Assistant Treasurer. I think the original drafters didn't want the Vice Mayor to have all of the powers of the Mayor devolve upon him/her in the absence of the Mayor.

Seth Thompson: That could be. If we want to make it clearer, I think...

Councilman Garde: This is clear. I think what the obligation would be that they just have either an Ordinance or another little section. I don't want to put it in the Charter, but to have a little Ordinance. This says Ordinance of the Town Council. That's not right. It's Ordinance, period. Right?

Seth Thompson: Yes, Town Council is a little superfluous.

Councilman Garde: So let's take it out.

Seth Thompson: Councilman Garde to go to your point, I think it would be clearer if it said and to perform other such duties and such other powers of the Mayor, as are prescribed. So to take out that "and to have", so it makes it clear that the modifier applies to both duties and powers?

Councilman Garde: That works for me.

Seth Thompson: Cross out "to have", so now the list is really a list of two, instead of a list of three items.

Councilman Garde: Yes and it's clear. I thought the "as prescribed" applied to both because there was no comma.

Seth Thompson: We have that debate all the time.

Councilman Garde: I know. I don't want to get into it, but what I think this does is if we want the Vice Mayor to have any other powers, we need to put it in an Ordinance or we could always put it in a Resolution.

Seth Thompson: I'm trying to think of what scenario, what likely scenario there is that the Mayor needs to act.

Councilman Garde: The Mayor is the senior elected official. He/she is elected separately from Town Council members. The Town Council members don't vote for the Mayor. The citizens vote for the Mayor and it's been extremely... the other two positions Treasurer and Secretary are appointed positions, so I think the drafting of the duties of the Vice Mayor is fine, just the way you have it, with the two deletions

Seth Thompson: I was just trying to think of a scenario, like a common scenario where the Mayor had to make some decision and let's say the Mayor is out of town. I was trying to think if the police force issue was one. Is there some exigent circumstances issue?

Councilman Kost: What happens if the Mayor is in a car accident and winds up in the hospital for two years and the Vice Mayor is in charge for two years, until the term of the Mayor runs



out? Are we going to have to pass special Resolutions determining for that period what the Vice Mayor will do, in case the Mayor is just not physically present for that long period of time?

Mayor Jones: Does it fall back to vacancies? Is that not a vacancy? There's where that catch is if you're going to be out for a length of time, the conversation we had earlier.

Councilman Kost: You're talking about one meeting, as opposed to a year's worth of meetings.

Councilman Garde: Let's just look at this. The wording has thrown me, but now I'm reading it differently. It says such other powers of the Mayor, as are prescribed by the Charter of the Town of Milton. So is as prescribed by the Charter of the Town of Milton, does that apply to duties or to Mayor? If it applies to duties, then we have to prescribe some. If it applies to Mayor, then we don't. I see some heads shaking out here. Have we got any English teachers out there, because if it's as are prescribed, if it's the powers of the Mayor as are prescribed, then we don't need to do anything. When I first read it, I thought it meant perform other such duties as are prescribed; but if it says the powers of the Mayor as are prescribed, we're done. It's essentially devolving upon.

Seth Thompson: But then it bring special use permit the debate of if that's what happens, why not use the same language?

Councilman Garde: Yes. I brought up the same language, but I think...

Councilman Kost: Strike duties, all the way down to prescribed by the Charter; beside at meetings of the Town Council and perform such duties prescribed by the Town Charter; get right to the heart of the matter.

Councilman Garde: The problem with that one, I think, at least to me, is the Town Charter then has to prescribe those duties, unless you put in duties and powers of the Mayor. It is drafting. It's a question of whether the little phrase "as prescribed by the Charter" if it applies to duties and powers, or if it applies to of the Mayor, as prescribed by the Charter.

Mayor Jones: Let me throw one more thing in for you to consider. For us to consider. Under Vacancies, Section 12. If any vacancy shall occur in the office of the Mayor, the Mayor's been in an accident; Resignation; Loss of Residence; Refusal to Serve or otherwise, the Mayor's been in an accident, the office shall be filled by a majority of the remaining Mayor and Town Council members. Is that contrary to this dropping it onto it's...

Seth Thompson: No. This section is you're away on vacation.

Mayor Jones: Okay. Nothing permanent about it?

Councilman Garde: No. Right.

Seth Thompson: Right.

Mayor Jones: I just want to make sure they're not contrary to one another.

Councilman Garde: It just says in the absence of.

Mayor Jones: Okay, what is the absence of?

Councilman Garde: You're right.

Seth Thompson: I think the initial one, is the one they thought of immediately, that's why they list it first. Preside over a meeting when the Mayor isn't there.

Councilman Garde: That's what we want to happen, right. So I'm ready to say that as prescribed by the Town of Milton, applies to words of the Mayor.

Mayor Jones: Will you read d. for me, how you would like that to read?

Seth Thompson: Sure. Me or Councilman Garde?

Mayor Jones: Either you or Councilman Garde.

Councilman Garde: Here's what I have in mind. "It shall be the duty of the Vice Mayor, in the absence of the Mayor, to preside at all meetings of the Town Council and to perform such other

duties...

Seth Thompson: And have?

Councilman Garde: And to perform such other duties and powers of the Mayor, as are prescribed by the Charter and the sentence ends of the Town of Milton, or by any Ordinance.

Mayor Jones: Do you need Ordinance?

Seth Thompson: You don't normally charge the Mayor to do something in your Ordinances; but as soon as I say no you don't need it, there's going to be something in your Town Code that the Mayor's directed to do.

Councilman Garde: If you search that book for the word Mayor in those seven gazillion pages, I'm sure you'll find it at least once.

Mayor Jones: Okay.

Seth Thompson: It's going to be whether it's the Mayor signing off on something.

Mayor Jones: Jeff, let's give Judy a chance and then I'll call you right afterwards.

Councilman Garde: Can I make one more suggestion? Take out the word "perform" and put the word "have" there, so to preside at all meetings and to have such other duties and powers of the Mayor as prescribed? Okay?

Judy Shandler, 202 Grist Mill Drive: Here's my comment. I go back to what Marion said about was it Item 12, that talked about in the event some... And I don't know, did it enumerate dire circumstances; whatever, to my mind, if you don't have some sort of a stipulation of a period of time in this one here, like for a period not to exceed one month, then you're letting it go to the Vice Mayor. It seems to me there should be some distinction between 12 and this one here; because I do hear, what I hear, is that they are contradictory. One is saying if the Mayor's unavailable for any unspecified period of time...

Mayor Jones: And it doesn't say why. Right.

Judy Shandler: The Council's going to decide who's going to take over and then this one stipulates if the Mayor's gone, the Vice Mayor. So they're two different things. My opinion. So it seems to me, you could limit one or the other, with some period of time, like not to exceed one month or whatever.

Mayor Jones: Thank you. Mr. Dailey.

Jeff Dailey: You also might want to take a look at what the Oaths of Office are; because everyone elected to Council takes an Oath of Office, as does the Mayor, but there is no mention, to my knowledge in this Charter, of an Oath of Office should a Vice Mayor take over the responsibilities of a Mayor. So you don't want to get too far down the road and then find out, well if it's a bona fide office and in some jurisdictions oaths codify an office, so you don't want to leave that open-ended. Just a suggestion.

Councilman Garde: It's a good one, but Mayor Jones, is your Oath the same as the Town Council Oath?

Seth Thompson: Other than the word "Mayor".

Mayor Jones: Other than the position I took. To uphold the Constitution, the State and the Ordinances and laws.

Councilman Garde: That's why I'm asking, because I took an oath to support and defend the Constitution of the United States of America against all enemies, foreign and domestic... more than once. But it's the same for every Commissioned Officer, the same for every Midshipmen; those are my two experiences, but it's not the same for all of us, because the Vice Mayor has got to be a member of Council, Jeff and the Vice Mayor has to have taken an oath to support the

Town Council of the Town of Milton. It's not just as Mayor. He or she must be a Town Council member, he or she must have taken the oath for Town Council and I think it's fairly broad.

Mayor Jones: Question? Judy, in d. and this would put a whole new reason to come up with a definition. It shall be the duty of the Vice Mayor in the short term absence of the Mayor?

Seth Thompson: You could say temporary.

Councilman Garde: I like temporary, yes.

Mayor Jones: I was going to say you have to worry about meaning.

Seth Thompson: If the issue is differentiating between Section 12, Vacancy and Section 15. If you say temporary absence of the Mayor vs. the Vacancy, you're talking about something permanent here; the resignation, loss of residence, death, refusal to serve, all those...

Mayor Jones: Otherwise.

Seth Thompson: You're right, so the list suggests that they are permanent though, that there's no coming back from it.

Mayor Jones: I would prefer to differentiate that if you're going to use it, then to put the term temporary, just because of one...

Seth Thompson: I thought of language that I like a little bit better.

Mayor Jones: Yes, because Councilman Kost had...

Seth Thompson: Maybe this clears it up for you. To preside at all meetings of the Town Council and to have such other duties and powers as prescribed to the Mayor by the Charter. Does that work better than them next to each other?

Councilman Garde: Yes.

Seth Thompson: Okay. I think that clears up what's modifying what.

Councilman Garde: It does. Good.

Mayor Jones: I'll speak for a councilperson who is struggling with the fact that Temporary is not much of a definition.

Seth Thompson: I completely agree with you, in the sense that what's Temporary...

Mayor Jones: So can we put anything else that can be more easily understood. We don't need any trouble.

Councilman Kost: Possibly, if the Council would vote to have the Vice Mayor take over for the Mayor. Council would have to make a decision, if Council decides this is going to be a long term thing; whether it's a vacancy or whatever it may be.

Councilman Garde: A year isn't Temporary.

Seth Thompson: The one thing I want to tread lightly on is you don't want to open up the door where...

Councilman Kost: Insurrection?

Seth Thompson: That's exactly right, because then you're overriding the will of the people that voted for that Mayor. It's the same reason you can't vote to make somebody else recuse. It's not supposed to be some tool to silence someone.

Mayor Jones: So it just can't read, it shall be the duty of the Vice Mayor when the Mayor is on vacation to preside over all meetings? Because that's basically what we're filling, right? Something as simple as just a scheduled out of town, routine.

Seth Thompson: So the two words are vacancy and absence. Absence to me is I missed a day of school. Vacancy is, I moved.

Councilman Garde: But you could have out-patient surgery, you could have a zillion reasons to be temporarily absent, other than be on vacation. You could be at your son's wedding, which I

will be in three weeks.

Mayor Jones: That would be a miracle.

Councilman Garde: You could be at your sister in law's funeral, which I was for the last Town Council meeting and those are temporary absences.

Mayor Jones: Okay.

Seth Thompson: There is a move in the State Code that if people miss X number of meetings, then that's just cause, because you often see that terminology; somebody could be removed for just cause, which is just as amorphous and subjective as temporary, I guess; so then they often define just cause as including absence or unexcused absences of X number of times over X period or Y period. You could do that. I can look up some of that language, if you want to consider it.

Councilwoman Parker-Selby: You just said that the unexcused and excused are used often to determine whether someone should have a notice to be dismissed from a Board and the excused are usually when they are diligent about calling in or letting someone know; unexcused, you just don't show up and nobody knows why.

Seth Thompson: Which is funny, because at some point those unexcused absences become refusal to serve, which is a vacancy.

Councilwoman Parker-Selby: Right. That's what I was thinking about earlier and there's a record kept of the excused/unexcused.

Mayor Jones: So unexcused absence is simply calling in?

Councilwoman Parker-Selby: If you have a legitimate reason why you're not going to attend, and people know you're not going to attend. Suppose you needed the quorum and three people had to be there; then you know ahead of time without guessing it when you've gotten here, wasting gas and time.

Mayor Jones: Are we finished with Section 15.d?

Councilman Garde: How do we feel about excused vs. Temporary?

Seth Thompson: I put down Temporary.

Councilman Garde: Me too, but I like excused. Neither one is definable, but things like surgeries and weddings and funerals and vacations are excusable. They're also Temporary.

Seth Thompson: But then what if the Mayor does give an excuse, does the Vice Mayor then not have the ability to preside over that meeting? Isn't that the affect of that?

Mayor Jones: Who determines what's excusable?

Seth Thompson: Yes.

Councilman Garde: Alright let's stay with Temporary.

Seth Thompson: I think at least Temporary helps to create some divide between vacancy and this section.

Mayor Jones: Temporary, appears to help. Can we go with Temporary? And we have 15 minutes. I'm just giving us a 15 minute call to it being 8:45. We're onto Section 16?

Seth Thompson: Secretary and we have Mayor and Town Council and then at the bottom, powers prescribed in the Charter or by Ordinance.

Councilman Garde: Two conforming's of no particular significance, but on the 5<sup>th</sup> line it says Rules of the Mayor and Town Council. You don't need of the Town of Milton anymore. And the same thing two lines down Mayor and Town Council, delete of the Town of Milton. Those are not significant comments, but they do conform the language.

Mayor Jones: So it's of the Town of Milton relative to the affairs of the town, correct?

Councilman Garde: No, it says Mayor and Town Council relative to the affairs... Because of the Town of Milton just is an adjectival phrase defining the word "Council" and we no longer need it to conform language.

Mayor Jones: Mr. Crawford, I'm just going to call on you early; maybe you could shed some light. What can we help you with?

Steve Crawford: Shall we remove the word "journals"?

Seth Thompson: Unless we're referring to the old ones, I guess.

Councilman Garde: You would have to substitute "minutes".

Steve Crawford: That's fine.

Councilman Garde: Do you have any journals, Kristy? Okay, changing journals to minutes; we did something like that earlier, so that that actually is conforming also.

Steve Crawford: Councilwoman Patterson, you're the Secretary? I guess my question is do you actually do all that says you're supposed to do? And the reason I ask that, are you charged with the responsibility of ensuring that that stuff is done?

Councilwoman Patterson: That's true. Most of it goes through Administration and then they tell me what to do.

Steve Crawford: So, I might suggest that you might want to add that kind of language that the Secretary is responsible for ensuring that whatever that stuff says it is, as supposed to really sticking you with doing all of that, which it says you really should do.

Councilwoman Patterson: That's a good point.

Mayor Jones: Shall ensure the custody of books, journals...

Steve Crawford: And maybe ensure that the appropriate Town Official, however you want to say that. Okay?

Councilwoman Patterson: Yes, absolutely.

Seth Thompson: So, shall have charge and ensure the custody of books?

Councilwoman Patterson: I like that.

Councilman Coté: What are books?

Seth Thompson: Before you guys had your General Code, there used to be books of Ordinances, that's what people called them, your Ordinance Book. But now all of those Ordinances combine to become the Town Code; that's how we do it now, but previously there used to be books of Ordinances and books of Resolutions.

Mayor Jones: Are some of these terms obsolete?

Seth Thompson: Yes, but the question was whether the old ones, do they still apply?

Councilwoman Patterson: We still have them, so we can still refer to them.

Councilman Coté: I'll put on my green eye shade. Books, to me, you clarified one thing and it could be a Code Book; but Books, I'm thinking of Accounting Records.

Seth Thompson: Are you thinking Financial?

Councilman Garde: You're not talking about betting, I'm sure.

Councilman Coté: To me, those are books.

Councilwoman Patterson: In a legal sense, I don't see that. I see the books as being older.

Seth Thompson: In my mind, I immediately thought of a Book of Ordinances.

Councilman Garde: So we have books, minutes, records, papers and other effects of the Town of Milton that shall be... This actually assigns you the responsibility to keep and maintain in a safe place.

Councilwoman Patterson: Right.

Councilman Garde: Are we happy with that?

Seth Thompson: You could say arrange. You could say shall arrange to keep...

Councilwoman Patterson: Okay.

Seth Thompson: Does the Town have a stamp, or a seal, that you use?

Councilman Garde: I think the second sentence is the one that I always had a bit of an issue with, because the Administration does this.

Councilwoman Patterson: Because I'm not keeping the complete records, the Administration keeps that for the Secretary and the review, if necessary.

Councilman Garde: So, again, should we put shall ensure the keeping of a full and complete record, if we want to assign this to the Secretary, or do we just take this out and say it's... The better drafting might be he/she shall ensure that a full and complete record of all the transactions of the town that may be prescribed, shall be kept?

Councilwoman Patterson: It's just awkward, I guess.

Mayor Jones: Councilman Garde, how about that he/she shall deliver the same to his/her successor in office, if they're kept in Town Hall?

Seth Thompson: Arrange for delivery.

Mayor Jones: Not even delivery. It's kept there.

Councilman Garde: Transfer custody? The same to his/her successor?

Councilwoman Patterson: Yes.

Councilman Coté: Well...

Mayor Jones: It's not custody.

Councilman Coté: He doesn't really have custody. Town Hall has custody.

Seth Thompson: So at the very top we used ensure the custody of books. Shall we go back to that language?

Councilwoman Patterson: Keep it all the way through.

Seth Thompson: Right, so he/she shall arrange to transfer custody or shall ensure transfer of custody?

Councilman Garde: No, but it's the term custody is the big bugaboo.

Councilwoman Patterson: Right, because the custody is with the Town Administrator.

Seth Thompson: You could say transfer authority of the same.

Councilman Garde: I was going to go back to devolve upon his successor.

Mayor Jones: How would you have that sentence read?

Seth Thompson: He/she shall transfer authority of the same to his/her successor in office. I guess that works.

Councilman Garde: One more time, Counselor, please.

Seth Thompson: He/she shall transfer authority of the same to his/her successor in office. I suppose if there's some combination to a safe, that kind of thing. And the last sentence, fortunately, is one of the more straightforward ones.

Councilman Garde: Yes.

Seth Thompson: Something that we actually, physically do.

Mayor Jones: Well then b. is back to custody and I had the question, if you're finished with a.? Okay, under b. it talks about all of these journals, records may in the presence of several, be inspected by anyone desiring legitimate information at any time(s) as may be convenient and will not interfere with the regular routine of business of the town.

Councilwoman Patterson: The minutes should be in there.



Mayor Jones: First of all, we're talking about in the custody of the Secretary, because we just talked about all of those records, but this talks of nothing about FOIA.

Seth Thompson: I'm trying to think of a scenario where somebody wanted to see an original, as opposed to getting a copy under FOIA. Maybe that's where this section would arise?

Mayor Jones: This section was a little confusing to me; b. is confusing to me.

Councilwoman Patterson: Does anybody even do that anymore? Wouldn't that just be FOIA'd?

Seth Thompson: People would just FOIA that.

Councilwoman Patterson: People use FOIA, so that just gets eradicated.

Seth Thompson: Part of this comes from the notion in corporate law of the books and records request; that a shareholder can make a books and records request, but I agree, the modern day means is somebody files a FOIA request and we produce copies.

Councilwoman Patterson: Let's take a step back. The books and records and journals, is basically the minutes, as we know them now.

Councilman Garde: Well we changed the word "journals" to minutes, so we've kept books, records, so I think it should say, all books, records and minutes of the Town of Milton as defined above; or as outlined above in Section a. Okay.

Seth Thompson: Okay.

Councilwoman Patterson: But you're not...

Councilman Garde: The bigger question is, do we want them, or are we allowed to have them inspected by anyone desiring legitimate information at any time? That's the question.

Councilman Kost: We've already did that. I and a number of resident's of Cannery Village got out all the minute books and everything that the Town had concerning Cannery Village going back to day one and spent a number of hours, I think there were six of us, going page by page looking and tried to find out the history of what took place.

Councilwoman Patterson: And you went through the minutes? You were looking through the minutes of that, right? Yeah.

Councilman Kost: We had them all, all the books and we did it.

Councilman Garde: Here's a couple of points that I think number one, is how this interplays with FOIA and number two is how it interplays with any Executive Meetings and/or records of Executive Session discussions that don't become available or should not become available, because they were done in a private session; so I think that this is potentially more general than we want it to be. Jeff is not here, but I will just leave that out there.

Mayor Jones: Executive Session minutes can also be FOIA'd.

Seth Thompson: It depends.

Councilman Garde: The way this b. reads, the way I would interpret it, that anybody desiring legitimate information could have access to Executive Sessions.

Mayor Jones: That's exactly what it says.

Councilman Garde: Yeah. I'm not sure we want that.

Seth Thompson: The word legitimate modifies information. Legitimate is not the word that FOIA uses, but I think the argument would be that that's where it's going, so there's a reason that we have exceptions to...

Councilman Garde: Exactly. We can't have an Executive Session without it's being qualified under FOIA. You can't just do it willy nilly.

Seth Thompson: Exactly, so I almost think that the word legitimate is the hook; it's just not the right word to hook into FOIA, because that's not the word that FOIA uses.

Councilman Garde: How about if we said something desiring information... We need to refer to FOIA in this, in my view.

Seth Thompson: I agree with that, too. I'm trying to see what word they typically use to describe the information. They use public record.

Mayor Jones: Is this where FOIA's going to show up in the Charter? We need to refer to it, I agree with Councilman Garde.

Councilman Garde: We need to bring it into this, because of the...

Seth Thompson: So I would say and here's the way I might do it.

Councilman Garde: We're dwindling. I propose that we do be finished with 16.

Seth Thompson: We might want to say all public records, as defined in 29DelCode Chapter 100, because that's really how that works.

Councilman Garde: That really works for me.

Mayor Jones: Okay, where are you putting that piece?

Councilman Garde: Right at the beginning.

Mayor Jones: At the beginning.

Seth Thompson: So all public records...

Councilman Garde: No. All public records of the Town of Milton, as defined... instead of as outlined above.

Seth Thompson: As defined in 29DelCode Chapter 100 and that's FOIA, so that's helpful because public record, the way FOIA's structured, is everything's a public record, except for and then you have your Personnel File, you have your trade secrets, you have your criminal investigation files, so that really works, so you don't have to worry about someone discovering something they wouldn't get under FOIA.

Mayor Jones: This does appear to be when people could just walk in, but then you have to gather all these people together in order for that person to look at these documents.

Councilman Garde: Well it says, or any member... No, it says Mayor, Secretary, Assistant Secretary.

Seth Thompson: It can be any one person.

Councilman Garde: I think it could be any one.

Mayor Jones: Is that wise? I would ask you, is that wise? Only one person can lead somebody else in to look at records. If we're going to just move it over in favor of FOIA, that's one thing, but any councilperson otherwise, can be tapped to take you into the records room and show you these things.

Seth Thompson: I think the concern was that somebody would destroy or damage something, so if you have your old Code, or whatever, some original document, the concern is that if that person isn't accompanied, then potentially they're going to deface something or they're going to destroy something that you can't replace.

Mayor Jones: What I'm saying is, aren't we moving away from come in, any time, or times that may be convenient to filling out a FOIA for this information?

Seth Thompson: You're right. This contemplates somebody coming in.

Mayor Jones: So we're striking something here.

Councilman Kost: When we came in, we did not know what we were looking for; we were looking for the history and we couldn't tell you specifically what we were looking for. All we knew was we wanted to find out the full history of Cannery Village and if you're going to say you're going to require someone to give a FOIA request, very specifically, sometimes that can't

be done.

Mayor Jones: Well, when you came into Town Hall, who supplied you with those minutes?

Councilman Kost: The Town Manager. I forget how we requested it, but we met in the Town Manager's office at the big conference table and all the books were there; a big pile of them; it was six guys and we spent most of the morning page by page, going through every book, making note of everything that was pertaining to us, so we could then get a complete record of the dates basically and if something was important, we made a note of what that was; somewhere we have a complete record. Actually, an incomplete record, because key things were missing; they just weren't there. You can so narrowly define this, that people with legitimate reasons for doing things, are not going to be permitted to do it, because they simply can't tell you specifically what they're looking for.

Seth Thompson: So the general FOIA philosophy somewhat mirrors with what Councilman Kost is talking about; it says all public records shall be opened to inspection and copying. In other words, it almost contemplates that you could see the original, before you copy it. I understand his point. Sometimes you don't know exactly how to describe it, because you don't know exactly what it is you're looking for.

Councilman Kost: I went looking for a Deed this morning, online, I didn't have the book volume number and I finally wound up having to call the Recorder of Deeds and tell her basically what I was looking for and she found it for me. If I had to go simply and tell you, I couldn't do it.

Mayor Jones: But this business about as may be convenient, routine business, you must have made an appointment to look through volumes so large and certainly in normal circumstances, you'd need to give that administrative person a clue or a jumping off point as to what records we want to pull for you.

Councilman Kost: Yes. Absolutely.

Seth Thompson: I envision the process like when I first came on board and we have this outstanding issue. Robin would pull the file and very often, especially your development files, they're often large construction drawing sheets and that sort of thing; things that are not easily copied, so he'd have two boxes sitting on the conference room table and I would spend a few hours looking through and familiarizing myself with it. It sounds like that's similar to what you went through.

Councilman Kost: Yes. We were gathering history, was what we were doing, to figure out what happened.

Mayor Jones: To make this an operational process through Administration and not policy-makers, could it not be in the presence of the Town Administrator and his/her designee.

Seth Thompson: That makes a lot of sense.

Mayor Jones: I can't see hauling elected officials in to do this, nor do I think it's proper.

Councilwoman Patterson: No. You're right.

Councilman Garde: In the presence of the Town Administrator or his/her designee.

Seth Thompson: I would put, or both; so in other words, it's not limited to just one person; it could be two. Do you know what I mean?

Councilman Garde: Or both, that's fine.

Mayor Jones: Did you put the word "both"?

Seth Thompson: I did and we do that to avoid the and/or; that's something that people don't like to see in the Code, so we do this person or this person or both.

Mayor Jones: Town Administrator.

Seth Thompson: Or his or her designee or both.

Councilman Garde: Now it could be inspected by anyone desiring legitimate information at any time(s) as may be convenient and will not interfere... I think we still want to be open; we're only trying to guard things that need to be guarded.

Mayor Jones: But I think it's easier putting it in. Like I said, the operational point, that somebody who's already there at Town Hall.

Councilman Garde: I agree.

Councilwoman Patterson: Absolutely.

Councilman Garde: So we have all public records of the Town of Milton as defined in 29DelCode Chapter 100 in the presence of the Town Administrator or his/her designee, or both, may be inspected by anyone desiring legitimate information at any time(s) as may be convenient and will not interfere with the regular routine of the business of the town. Is that right?

Seth Thompson: Yes, the only thing from the legal element, where it says... really under FOIA if you're a citizen, you don't have to give a reason; which is different then businesses, where if you're a shareholder in a business and you say I'm filing this books and records request, they get to say why? You need to tell me. And we really can't do that. We can't ask people, why do you want to see that?

Councilman Garde: Where do you...

Seth Thompson: The word "legitimate".

Councilman Garde: Desiring?

Seth Thompson: I would just say desiring inspection.

Mayor Jones: I would just say information.

Councilman Garde: No, it's desiring to see such documents, is really what we're saying, all such public records.

Mayor Jones: Inspect? Inspect?

Councilman Garde: Desiring to review, or inspect is fine. Desiring to inspect such public records?

Mayor Jones: Now may I ask, when that occurs that you just stop in, in order of a matter of record, do you fill out a FOIA just as a courtesy?

Seth Thompson: Even if they don't want the copies, yes. Okay, good.

Mayor Jones: And it doesn't have to state that in here, that's a policy.

Seth Thompson: Right.

Mayor Jones: Okay.

Seth Thompson: The State Code governs the form of request.

Mayor Jones: So we're onto c.?

Councilman Garde: Taking out in the custody of the Secretary; how about we just say, all books, records, papers and documents of the Town of Milton as outlined above, shall be opened for inspection by the Mayor and members of the Town Council.

Seth Thompson: So here's the question. We outlined above public records, under FOIA?

Councilman Garde: Do you want to say in a.?

Seth Thompson: The thing that came to mind, do you want your council members to be able to see documents that aren't public records, that a member of the public... in other words, your Personnel files. Do you want your Council members to be able to see it? They're not technically

within the definition of public records.

Councilman Garde: So do you want to go with all public records of the Town of Milton?

Seth Thompson: It's up to you, but of course, the Council has to make personnel decisions and to do that, they need access to the information, but the question is whether... just by virtue of being a member on Council, do they have carte blanche to see all of the documents, including the ones that fall within an exception to public records under FOIA. That's the question.

Mayor Jones: I wouldn't know what the need was. Again, I think that's operational and we're policy-makers. Now the Personnel Committee is a different issue, because they may be dealing with... and then they are still making a recommendation to Council.

Councilman Garde: I like all public records again here, because that takes you to a definition and the public records we did define as it's the public records as defined in FOIA.

Seth Thompson: That's right.

Councilman Garde: Let's go with the same language.

Mayor Jones: So would you read that for me?

Councilman Garde: I'm going to recommend the same language that we used above; so it would be, all public records of the Town of Milton, as defined in 29DelCode Chapter 100, shall be opened for inspection by the Mayor and members of the Town Council. Counselor is that okay?

Seth Thompson: I think that works.

Councilman Garde: I think it limits it to what we want it to be limited to.

Seth Thompson: Taking it down to the very basic level now, the only difference between the Council member and a member of the public, the member of the public is going to need to be accompanied by the Town Administrator or his/her designee, but the Council Members by virtue of the position, doesn't have to have somebody with them.

Councilman Garde: That's correct. That becomes the difference. Here is d.

Mayor Jones: Okay, that's pretty self-explanatory.

Seth Thompson: The devolution.

Councilman Garde: Right.

Councilwoman Patterson: Do you want to mirror the wording that we used... I'm sorry.

Steve Crawford: Who is the Assistant Secretary?

Mayor Jones: We don't have one.

Councilman Garde: I think it says "may".

Mayor Jones: It says "may"; it's not a... just like an Assistant Treasurer.

Councilman Garde: We may have one, but we're not required to have one, but the duties shall devolve. I think it says we may have one. I'm not sure if it says we "shall" have one. Did you go back there John?

Steve Crawford: No, don't go back.

Seth Thompson: The only thing in this section is that it talks about the powers being prescribed by Resolution. To go back to our Vice Mayor discussion, do we really want to limit it to the powers and duties that are prescribed by Resolution, or do we also want the powers and duties that are prescribed by Charter; but maybe not.

Mayor Jones: The Charter.

Seth Thompson: Yes.

Mayor Jones: We used it as Charter last time, right?

Seth Thompson: Right.

Councilman Garde: But having devolved them upon the Assistant, that's the whole megila.

That's the whole package.

Seth Thompson: You're right. So then the second could be just additional items that Council would...

Councilman Garde: It shall perform such other duties and have such other powers as may be prescribed by Resolution.

Seth Thompson: So in other words, you can do...

Councilman Garde: You could expand them.

Seth Thompson: Right, the Assistant Secretary could have additional items that the Secretary doesn't already have.

Mayor Jones: Does Resolution become a capital?

Seth Thompson: It can. I know we capitalize Ordinance. I would think Resolution would then be capitalized.

Mayor Jones: And it drops at the end of Town Council, Mayor and Town Council? We include no compensation.

Councilman Garde: I'm sorry, I'm just going back to Steve's point. Eight says, the Mayor may also select an Assistant Secretary. That's where the "may" is. So if we have one, then the duties devolve.

Mayor Jones: Where does that sentence end on d. is what I'm looking for?

Seth Thompson: You could say that they don't receive... It is funny, because I think the shall receive no compensation might be a little bit confusing in that they're a member of Town Council, so they get their...

Mayor Jones: Well, they don't have to be.

Councilwoman Patterson: No additional compensation?

Mayor Jones: The Assistant Secretary doesn't have to be a member of Council. I believe it says that.

Seth Thompson: Oh, okay.

Mayor Jones: So he shall not receive compensation.

Councilman Garde: What it says is who may or may not be from among the members of the Town Council, going back there.

Mayor Jones: I didn't find one you didn't know. That's impossible.

Seth Thompson: I didn't realize that. That's interesting.

Mayor Jones: So we're going to take that sentence all the way out. It just doesn't end at the Mayor and Town Council of the Town of Milton and he or she shall not receive compensation.

Councilman Garde: You can take off the Town of Milton, because that's just language.

Mayor Jones: And he or she shall receive no compensation. Okay.

Councilman Garde: What does that sentence say?

Mayor Jones: The Assistant Secretary shall likewise perform such other duties and have such other powers, as may be prescribed by Resolution of the Mayor and Town Council and he/she shall receive no compensation.

John Collier: This is a silly question, but nonetheless, based on what I just heard discussed with the potential that the Assistant Secretary may not be a member of the Town Council; could someone within Town Hall be appointed to the position of Assistant Secretary and then, thereby, inherit all those duties or be the likely one to have them?

Seth Thompson: Yeah, I mean you could do that. The thing that immediately came to my mind is who takes notes in Executive Session? Now you have somebody who's not on Council



serving a function, but as far as outside of Executive Session...

John Collier: You have a member of staff, I think, that always attends Executive Session.

Seth Thompson: Unless it's a Personnel decision.

John Collier: That's generally the point that I would make. Most of this language is old and has been in the Charter for some time now. I was trying to think back to see if I could recall and I think I've actually seen that in really old minutes, that for other reasons I reviewed, in reference to the Assistant Secretary and at the time I think it was the Clerk, the Town Clerk.

Seth Thompson: That makes sense.

John Collier: I don't know that to be the generally the case, it's just a comment; that's the only reason I can see why that would exist.

Seth Thompson: Right, to take the minutes in the event that the Secretary wasn't... that that happened to be the Council Member that wasn't there that meeting.

Mayor Jones: And I take it to be Temporary, like before, because it says in the absence, or inability, so we're talking Temporary absence, right?

Steve Crawford: What is the purpose of the Assistant Secretary then? Councilwoman Patterson as a Secretary, do you take the meeting minutes?

Councilwoman Patterson: I don't, but there was one situation where the recorder didn't work, so I took the notes and I wonder if that situation where Kristy Rogers would have to do it, if I wasn't here, but that was only the one time I've ever had to.

Steve Crawford: I remember that.

Mayor Jones: But Councilwoman Patterson, the Secretary takes notes in the Executive Session.

Councilwoman Patterson: Correct.

Mayor Jones: He or she keeps the minutes of the Executive Session.

Steve Crawford: Okay, thank you.

Councilwoman Patterson: So that is my real job, to take the minutes during the Executive Session.

Councilman Coté: In the section where it says here he/she shall receive no compensation, if it were to be a member of the Council...

Seth Thompson: Do you think that creates confusion as to whether they...

Councilman Coté: Can we just say shall receive no compensation for the role of the Secretarial duties?

Mayor Jones: Well, we'll have to pay attention to that for Treasurer, too, because that no compensation ought to be matched.

Seth Thompson: So for service as Assistant Secretary?

Councilman Coté: Yes. Do we need to spell out that the Secretary receives no compensation for services as Secretary?

Seth Thompson: I don't like to get into the habit of defining things, based on what they're not, because this thing could be much, much longer if we're going to describe everything based on what it isn't.

Mayor Jones: For services as, are we continuing Assistant Secretary?

Councilman Garde: As Assistant Secretary.

Mayor Jones: Okay.

Seth Thompson: I get your point on that. If we're doing it for one, why don't we do it for the other?

Councilman Coté: The same thing comes up with the Treasurer and the Assistant Treasurer, so

the same corrections... whatever we do to this one, we should do to that one.

Mayor Jones: Does anybody want to discuss anything other, we're going to end with Section 16? Our agenda on Thursday just picks up right here at the same place, so we're on Section 17 on Thursday, the 26<sup>th</sup>. Any other comments about what we've gone over this evening?

Councilman Garde: Other than thanks to those that are remaining and all those who made contributions to the discussion, who aren't here.

Seth Thompson: Yes, thank you I think it will be a better product. The comments along the way definitely helpful.

9. Adjournment

Mayor Jones: Do I hear a motion to adjourn?

Councilman Garde: So moved.

Councilwoman Parker-Selby: Second.

Mayor Jones: All in favor say aye. Opposed. Motion carried. Meeting adjourned at 9:18 p.m.